

1 A. I'm not familiar with the accident history
2 of this crossing.

3 Q. So what is your opinion that the railway
4 crossing should be closed based on, if not
5 accident history?

6 A. Its proximity to the construction of the
7 Kirk Road grade separation. It has been a long
8 standing policy that when grade separations are
9 instituted as a primary access route, that an
10 at-grade crossing is generally closed with the
11 thinking being that the grade separation will be
12 the safest route and it -- by the closure of the
13 at-grade crossing, it forces people to use the
14 safer route.

15 Q. And you're aware of or have knowledge of
16 the testimony previously adduced at this hearing?

17 A. Say that again, please.

18 Q. Have you read the transcripts of the
19 previous testimony that has come through this
20 hearing?

21 A. Not all, but some, yes.

22 Q. Are you aware, then, of the concerns of

343

1 and Route 38 would impact on the intersection of
2 Old Kirk and Route 38?

3 A. Am I aware that -- no, I don't -- I
4 haven't seen a traffic study showing that type of
5 data, so I don't know.

6 Q. Are you aware of whether any of the
7 reconstruction will go to the east to impact that
8 intersection?

9 A. I believe they propose a right-turn lane
10 on Kirk Road which would --

11 Q. I'm sorry, on Old Kirk Road?

12 A. No, on Kirk Road, the grade separation
13 which would allow a smoother right-turn
14 transition off of Kirk Road at Route 38 when
15 you're headed in a northerly direction; but how
16 that will impact Old Kirk Road, I do not -- I
17 can't say at this time.

18 Q. If these proposed roads that you've
19 testified to don't go through and the grade
20 crossing is closed, the only ingress/egress to
21 the businesses north will be Roosevelt Road; is
22 that correct?

345

1 the businesses to the north of the crossing that
2 if the crossing is closed and Route 38 is
3 constructed that they will lose appropriate
4 ingress and egress out of their facilities with
5 the incurrence of both of those events?

6 A. What do you mean by Route 38 being
7 constructed? I don't understand.

8 Q. Are you aware of any plans to reconstruct
9 Roosevelt Road?

10 A. I'm aware that there are some proposed
11 changes to the intersection at Kirk Road and
12 Route 38. And I'm aware of some proposed changes
13 east of this location, but I don't know of any
14 particular proposed modifications to Route 38
15 itself, that I'm not familiar with.

16 Q. And what is your knowledge of the changes
17 or the construction at the intersection of Route
18 38 and New Kirk Road based on?

19 A. The review of some plans we have received
20 from Kane County engineers or IDOT's engineers.

21 Q. And are you aware as to whether the
22 reconstruction of the intersection of New Kirk

344

1 A. Yes.

2 Q. And for those businesses who want to go or
3 travel south, how will they make that transition
4 if they have to exit or enter only onto Route 38?

5 A. Well, they can currently make a left turn
6 at Old Kirk Road and come south over the grade
7 separation.

8 Q. Are you aware of any plans that might
9 restrict the right turn in or out or left turn in
10 or out of access to Old Kirk?

11 A. I know that there is discussion of
12 limiting that access to a right turn in, right
13 turn out, only.

14 Q. So if that plan came into effect, then, a
15 business person or employee or a visitor to one
16 of the businesses there who wanted to exit onto
17 Roosevelt Road would be limited to making an exit
18 going east; would that be correct?

19 A. That is correct.

20 Q. How, then, if they wanted to go west, how
21 would they make that west movement?

22 A. I believe -- not being totally familiar

346

1 with all the street areas, I believe that the
2 traffic engineer who gave testimony previously
3 did the routing of that -- how that would have to
4 occur in whether they go up Elm Street or Lynn
5 Road or one of these other streets that's named
6 here (indicating) and come around and make --
7 they'd have to go north and then west and then
8 south onto Kirk Road, I believe is the route --
9 routing that he laid out at that time.

10 Q. And doesn't that rerouting adversely
11 impact the residents and businesses and visitors
12 or employees of those businesses in this area if
13 the crossing is closed?

14 A. Yes, it does.

15 MS. DICKSON: I have no further questions,
16 Judge Tate.

17 JUDGE TATE: Mr. Berry?

18 MR. BERRY: Yes, I just have one or two.

19 CROSS-EXAMINATION

20 BY

21 MR. BERRY:

22 Q. You mentioned that something you saw in

347

1 A. There is nothing -- they're in the
2 planning stages. My understanding is that the
3 City is in the process of working through those
4 details with IDOT currently to overcome any of
5 the barriers or hurdles or design issues for
6 signalizing the -- a variety of intersections at
7 Old -- at Route 38, both on the west side and the
8 east side.

9 Q. Is Route 38 a state highway?

10 A. Yes.

11 Q. So it's under the jurisdiction of the
12 Illinois Department of Transportation?

13 A. Yes, sir.

14 MR. BERRY: That's all I have.

15 JUDGE TATE: Any redirect?

16 MR. SHUMATE: Yes, your Honor.

17 REDIRECT EXAMINATION

18 BY

19 MR. SHUMATE:

20 Q. Mr. Andryuk, you referred to the alignment
21 of Old Kirk Road and Mr. Berry asked about the
22 realignment to the east. Approximately on this

349

1 one of the plans showed a shifting of Old Kirk
2 Road to the east. Is that away from the welding
3 plant, away from Old Kirk Road overpass?

4 A. Yes. Basically, Old Kirk Road -- as
5 you're headed north, about half-way between
6 Roosevelt Road and the grade crossing would take
7 a jog easterly for whatever the geometry is and
8 move the intersection of Old Kirk Road and Route
9 38 further to the east.

10 MR. SHUMATE: Your Honor, this is depicted on
11 the plan and I think it could be shown on the
12 overhead projector for Mr. Barry's view.

13 MR. BERRY: That's all right. That's the only
14 question I had on that.

15 BY MR. BERRY:

16 Q. Just one other thing I wanted to check. I
17 just wanted to be sure that I was clear that, did
18 you say the City had a project that was in the
19 planning stage but had not yet been approved by
20 the appropriate authorities to put traffic
21 signals at the intersection of Old Kirk Road and
22 Route 38?

348

1 preliminary conceptual site plan, approximately
2 how much to the east is the jog to the east of
3 Old Kirk Road as proposed? An approximation?

4 A. Well, I don't think -- I don't know if
5 there's a scale on this drawing.

6 Q. Yes. Right here (indicating).

7 A. I would say approximately 40 to 60 feet.

8 Q. And that would be from the center line of
9 the road to the center?

10 A. From the current center line of Old Kirk
11 Road to the new alignment.

12 Q. You were asked a question with regard to
13 design plans for the intersection of Kirk Road
14 and Roosevelt Road. Have you seen any final
15 design plans for that?

16 A. I've seen the most current plans for that.

17 Q. Are they final design plans?

18 A. I do not know.

19 Q. Have you seen any funding plans for that
20 particular intersection?

21 A. I have not seen any funding plans.

22 Q. Do you know of any funding plans?

350

1 A. I have spoken to representatives of the
2 Illinois Department of Transportation and they
3 have acknowledged that they have allocated a
4 certain percentage of funding for work at that
5 intersection.

6 Q. To your knowledge, has that funding been
7 approved by the appropriate governmental
8 authority?

9 A. I don't know.

10 Q. Okay. Have you seen a construction
11 timetable for that intersection?

12 A. No, I have not.

13 Q. So this is speculative, to a certain
14 extent, a speculative modification to the
15 intersection of Kirk Road and Roosevelt Road; is
16 that correct?

17 A. Yes, sir. I believe this has been going
18 on for a couple of years now.

19 Q. We looked at the video you had taken and
20 we looked at the residential nature of the area
21 south of the Railroad's tracks. Would you
22 characterize that as residential?

351

1 A. Yes, sir.

2 Q. Is there also a church back there?

3 A. Yes, there is.

4 Q. Are there any businesses, to your
5 knowledge, in that area?

6 A. I believe just south of the crossing there
7 is a little frontage road that parallels our
8 tracks and I believe there may be some business
9 back in there. But that's -- I'm not really
10 sure, but that would be the only thing that I'm
11 aware of.

12 Q. Generally, would you characterize it as
13 residential?

14 A. Yes, sir.

15 Q. Now, you saw tractor-trailer trucks at the
16 welding facilities; correct?

17 A. Yes.

18 Q. And there was testimony previously that
19 the welding trucks wanted to turn their
20 16-wheeler trucks onto Roosevelt Road; is that
21 correct?

22 A. Yes.

352

1 Q. And that their alternative would be to go
2 over the Old Kirk Road Crossing and go south; is
3 that correct?

4 A. Yes. One alternative.

5 Q. Now, would you expect 16-wheeler
6 commercial trucks to go through that residential
7 area on a routine daily basis?

8 A. I would hope not.

9 Q. In the information that you have with
10 regard to the intersection of Old Kirk Road and
11 Roosevelt Road, with regard to the establishment
12 of a traffic light at that location, why would it
13 have to be shifted to the east? What would be
14 the reason that IDOT would want it to be to the
15 east a little bit?

16 A. There are certain spacial criteria that
17 IDOT uses determining when looking at traffic
18 flows and the spacing of traffic signals.

19 Q. And is that generally for reasons of
20 safety?

21 A. I can't answer that question. I don't
22 know what their reason is.

353

1 Q. The installation of a traffic signal
2 installation where two highways come together, is
3 that generally for reasons of safety?

4 A. Yes.

5 Q. With regard to the removal of the crossing
6 at Old Kirk Road, is that for reasons of safety?

7 A. Yes, sir.

8 Q. You indicated that the trucks that would
9 come from the -- and vehicles that would come
10 from the commercial area, if they could not use
11 the current crossing at Old Kirk Road, they would
12 use the bridge; is that correct, have to use the
13 bridge?

14 A. To head south, yes; that is correct.

15 Q. And would that be a safer route?

16 A. Yes, sir.

17 Q. And why is it a safer route?

18 A. Again, using a grade separation where
19 there is no intersection with a railroad
20 facility, it's always a safer route.

21 Q. So -- just to reiterate this for the
22 record, currently at the intersection of

354

1 Roosevelt Road and Old Kirk Road, a vehicle can
2 make a left- and a right-hand turn; is that
3 correct?

4 A. That is correct.

5 MR. SHUMATE: That's all the questions I have,
6 your Honor.

7 JUDGE TATE: Any other questions for
8 Mr. Andryuk?

9 MS. DICKSON: Yes. I just have a couple.

10 RE-CROSS-EXAMINATION

11 BY

12 MS. DICKSON:

13 Q. Other than the general proposition that a
14 grade separation crossing means that there won't
15 be any interaction with cars, other than the fact
16 that a grade separation may be safer because of
17 that, why else would it be safer to close this
18 crossing? Are you aware of any accident history
19 at the crossing?

20 A. I'm not familiar with the accident
21 history.

22 Q. Does the crossing have signalization?

355

1 proximity to the grade separation and --

2 Q. Isn't that the only reason the UP wants to
3 close this crossing?

4 A. Well, the Federal Railroad
5 Administration --

6 Q. Excuse me, I'm asking you about the Union
7 Pacific Railroad now.

8 A. Repeat the question, please.

9 Q. Isn't the only reason the Union Pacific
10 Railroad seeks to close this crossing is because
11 in its opinion it's redundant because of the
12 grade separation at New Kirk?

13 A. I believe the -- no, that is not correct.
14 The safety issues are a primary factor at all
15 grade crossings.

16 Q. And what are the safety issues involved at
17 Old Kirk Road?

18 A. Any time you have a train and vehicle
19 traffic intersecting one another, it is a safety
20 issue.

21 Q. Is the UP attempting to go close every
22 at-grade crossing in the state of Illinois?

357

1 A. Yes, it does.

2 Q. Is the visibility at this crossing such
3 that vehicles attempting to traverse the crossing
4 have the opportunity to view a train coming from
5 either direction?

6 A. Yes. It has adequate visibility.

7 Q. Does the traffic crossing this -- the
8 railroad crossing, is it of such a volume that it
9 would require closing the crossing?

10 A. I don't understand the question.

11 Q. Are you aware of what the traffic volume
12 is that utilizes the crossing?

13 A. Based on the last traffic study that was
14 presented in the previous testimony, I believe it
15 was in the 6 -- close to 700 vehicles a day.

16 Q. And is there anything that indicates to
17 you because of the volume of the vehicles --
18 let's assume it's 6 or 700 vehicles a day -- is
19 there anything given that volume that leads to
20 the conclusion that the crossing should be
21 closed?

22 A. Well, again, it is redundant in its

356

1 A. That would be very optimistic on their
2 behalf.

3 Q. It isn't?

4 A. They are not trying to, that would be
5 unrealistic.

6 Q. So is the UP's concern for safety only at
7 this grade crossing?

8 A. No, not at all.

9 Q. Those same safety concerns, though,
10 haven't prompted the UP to seek to close every
11 other grade crossing?

12 A. No. It -- no.

13 Q. Does -- are you familiar with the criteria
14 required to be met to close a grade crossing?

15 A. Somewhat.

16 Q. From your somewhat familiarity with those
17 criteria, in your opinion, does the UP have
18 evidence necessary to meet each of those
19 criteria?

20 A. I don't believe this meets the vehicular
21 traffic pattern. It meets the adverse distance
22 criteria, but I do not -- and it meets the train

358

1 speed, train count criteria, but I do not believe
2 it meets the vehicle volume criteria.

3 Q. What do you mean when you say, "it meets
4 the adverse distance criteria"?

5 A. My understanding of the adverse distance
6 is for that -- if the crossing were closed to get
7 from one side of the crossing to the other,
8 rather than going directly across the crossing
9 that -- I think there was an at-grade crossing
10 there, the distance that one would have to travel
11 to proceed from one side of the crossing to the
12 other.

13 Q. And you haven't testified as to any
14 specific knowledge of that adverse distance. Do
15 you know what the adverse distance is?

16 A. Yes, I do. It is 1.2 miles.

17 Q. How did you make that determination?

18 A. I walked it with a calibrated wheel.

19 Q. Can you inform the body here today how you
20 did that and when you did that and what route you
21 took?

22 A. I did it on, I believe, January the 16th.

359

1 I started at the center of the crossing in
2 between -- it's a double-main line in between the
3 two tracks and walked -- oh, I apologize. I
4 started in the center of Roosevelt Road, headed
5 south, across the crossing, up to Cherry Lane,
6 west on Cherry Lane to the center of Kirk Road.
7 And although it is not a perfect square, I used
8 those general distances to complete the square
9 and that is approximately 1.2 miles. It's
10 actually wheeled off approximately 1.18 miles,
11 but I rounded it up to 1.2.

12 Q. And that is -- just so I'm clear, that's
13 going -- you're starting at the center line of
14 Roosevelt Road heading north --

15 A. South.

16 Q. -- heading south, crossing the tracks --

17 A. Crossing the tracks.

18 Q. -- going south to Cherry?

19 A. To Cherry Lane.

20 Q. Taking Cherry west?

21 A. That is correct.

22 Q. To New Kirk?

360

1 A. That is correct.

2 Q. If -- and in your opinion, how is that
3 relevant to the criteria for closing?

4 A. Well, the distance from the center line of
5 the crossing to Cherry Lane, west on Cherry Lane,
6 I know that -- I know the complete distance back
7 to Roosevelt Road, okay. So if you head north on
8 Kirk Road now --

9 Q. North from the crossing?

10 A. No. North on Kirk Road. I mean, I know
11 all the distances needed to make a square.

12 Q. How is what you've testified to relevant
13 to the criteria for closing?

14 A. I believe adverse distance has to be less
15 than 4 miles.

16 Q. Now, what would the adverse distance be if
17 you closed this crossing for an individual north
18 of the tracks who wants to head west if they're
19 limited to a right out only?

20 MR. SHUMATE: Objection. That's speculation.
21 It's clear on the evidence that you can make a
22 left and a right-hand turn on the intersection of

361

1 Old Kirk Road and Roosevelt Road. It's not in
2 fact --

3 MS. DICKSON: It's as hypothetical as this
4 proposed construction plan that Mr. Shumate wants
5 to rely on about the potential of having a
6 traffic light.

7 MR. SHUMATE: I disagree with that because
8 that's a hypothetical with regard to what may
9 occur in the future.

10 With regard to what the distances are,
11 he is testifying as to what they are today with
12 regard to the legal rights that are available to
13 the traveling public today and they are allowed
14 to make a left- and right-hand turn at the
15 intersection of Old Kirk Road and Route 38.

16 JUDGE TATE: All right. That's enough of
17 that.

18 Continue, Miss Dickson.

19 MS. DICKSON: I don't have any other
20 questions.

21 JUDGE TATE: Any other questions for
22 Mr. Andryuk?

362

1 MR. BERRY: I have one.
 2 RECROSS-EXAMINATION
 3 BY
 4 MR. BERRY:
 5 Q. Counsel brought up closure rules that the
 6 Commission has and you discussed the adverse
 7 travel portion of that closure rule; did you not?
 8 A. Yes.
 9 Q. I want to read a section of the closure
 10 rules and tell me if you aware of those: The
 11 Commission shall order the crossing closed if it
 12 meets the criteria set forth in sections D, F, G
 13 and I of this section or if under the provisions
 14 of Section 18(C)741 of the Illinois Commercial
 15 Transportation Law, the Commission finds based on
 16 the totality of evidence presented that public
 17 safety requires that crossing be closed and that
 18 public convenience served by the crossing in
 19 question is not such to justify its further
 20 retention.
 21 A. I don't believe I've ever read that
 22 section of the closing criteria.

363

1 Do you have another witness,
 2 Mr. Shumate?
 3 MR. SHUMATE: Yes, I'd like to call Rick Sturm
 4 now, if I could.
 5 ARICK STURMÁ,
 6 called as a witness herein, having been
 7 previously duly sworn, was examined and testified
 8 as follows:
 9 DIRECT EXAMINATION
 10 BY
 11 MR. SHUMATE:
 12 Q. Mr. Sturm, I remind you that you are under
 13 oath and that you have previously testified in
 14 this matter; is that correct?
 15 A. That's correct.
 16 Q. Now, you've brought with you some prints
 17 that have been marked for use at this hearing; is
 18 that correct?
 19 A. Yes, I have.
 20 Q. What are those prints?
 21 A. There's three prints here.
 22 Q. We do not have additional copies of these

365

1 Q. So, basically, what that section says is,
 2 we have this criteria set forth, D, F, G and I;
 3 however, if the Commission deems that it may not
 4 meet one or all of those conditions, it can still
 5 order the crossing closed?
 6 A. Yes. I've heard that before and that is
 7 my understanding.
 8 JUDGE TATE: Is this a question or a speech,
 9 Mr. Berry?
 10 MR. BERRY: It was meant to be a question.
 11 JUDGE TATE: I haven't heard the question yet.
 12 MR. BERRY: I'm sorry. I just wanted to be
 13 sure that he was aware because when he was
 14 talking he --
 15 JUDGE TATE: He's already testified that he's
 16 not familiar with the criteria as laid out in the
 17 Illinois Administrative Code.
 18 MR. BERRY: Okay.
 19 JUDGE TATE: Anything else?
 20 MR. SHUMATE: No, your Honor.
 21 MR. BERRY: No, your Honor.
 22 JUDGE TATE: Thank you very much, Mr. Andryuk.

364

1 prints at this time; is that correct?
 2 A. That's correct.
 3 MR. SHUMATE: Your Honor, to the extent any of
 4 them get into evidence, we would certainly make
 5 them available to every one.
 6 JUDGE TATE: Thank you.
 7 BY MR. SHUMATE:
 8 Q. What are these prints?
 9 A. Basically, there's -- by exhibits --
 10 Exhibit 7 is a conceptual plan for what I would
 11 call the east corridor to Geneva extending
 12 just -- the limits of it extend just east of Old
 13 Kirk Road, through the intersection of Kirk Road
 14 as you're going on Highway 38 and down to,
 15 probably, approximately, a thousand feet west of
 16 Kirk Road and 38.
 17 Q. And where did you get this document?
 18 A. These were given to me by McDonough &
 19 Associates, Incorporated, which is an engineering
 20 firm that is doing work with DuPage County, Kane
 21 County and the City of Geneva. On this corridor,
 22 basically, they're also tied in to the overhead

366

1 bridges at Kautz Road and Highway 38 over our
2 railroads tracks.
3 Q. So this is part of an overall project
4 that's east of Kirk Road; is that correct?
5 A. It extends a thousand feet or so west of
6 Kirk Road extending east, beyond our railroad
7 tracks at Roosevelt Road.
8 Q. So this is a major overall of what we call
9 Route 38 or Roosevelt Road?
10 A. Correct.
11 Q. All right. And both DuPage and Kane
12 County are part of that in cooperation with the
13 Illinois Department of Transportation?
14 A. That's correct.
15 Q. And the City of Geneva?
16 A. The City of Geneva as well.
17 Q. So that's Petitioner's Exhibit No. 7;
18 correct?
19 A. Yes.
20 Q. What's the next document that you have?
21 A. Exhibit 6 --
22 Q. Is that Petitioner's Exhibit 6?

367

1 A. Well, it's two more grade separations that
2 are being added just, basically, east of Old Kirk
3 Road.
4 Q. When you say "just east of Old Kirk Road,"
5 how far are we talking?
6 A. About a half-mile, seven-tenths of a mile.
7 I'm going to say seven-tenths of a mile.
8 Q. And is there going to be a grade
9 separation at Kautz Road?
10 A. Yes. Kautz Road and this latest
11 alternative, the one that looks most viable and
12 agreeable to all parties involved, is an
13 underpass at Kautz Road.
14 Q. And is there another bridge or underpass?
15 And where is it at?
16 A. And there's an underpass that goes
17 underneath our tracks east of the present
18 at-grade crossing and between our grade crossing
19 at Roosevelt Road and our tracks and Old Kirk
20 Road there's another underpass where Roosevelt
21 Road goes underneath us.
22 Q. Underneath the tracks of the Union Pacific

369

1 A. Yes. Petitioner's Exhibit 6 is what I
2 would call a more detailed or a blowup of
3 Exhibit 7.
4 Q. So it's essentially the same document just
5 a blowup of it?
6 A. Yes. A little bit more detail.
7 Q. A little bit more detail?
8 A. Mm-hmm, I believe so.
9 Q. And what's your third document? What's
10 that been marked as?
11 A. The third document is Exhibit 5.
12 Q. It's Petitioner's Exhibit 5?
13 A. Petitioner's Exhibit 5.
14 Q. And what is it?
15 A. It is the preliminary plans and the latest
16 plans that is proposed for the routing of Highway
17 38, otherwise called State Road and Geneva or
18 Roosevelt Road and its routing and how it crosses
19 over the Union Pacific tracks and there's been --
20 Q. Now, what relevance does this have to the
21 matter that's here today with regard to Old Kirk
22 Road and Kirk Road?

368

1 Railroad?
2 A. Yes.
3 Q. These are the same tracks that have the
4 crossing at Old Kirk Road?
5 A. Correct.
6 Q. So these modifications -- planned
7 modifications, they're to the east of Old Kirk
8 Road; is that correct?
9 A. Yes.
10 Q. Will that -- if these -- do you know what
11 stage of planning or possibility that these two
12 bridges are? Is this going to happen or is this
13 speculative or is this something that is on a
14 timetable?
15 A. This is their latest proposal plans that
16 they have. This is also something that's been
17 presented and they're working with what we call
18 the Chicago Area, it's a Create Plan. It's
19 something that's been in the works for rerouting
20 or routing of traffic -- train traffic through
21 the city of Chicago and northeast Illinois to
22 speed up the train movements through this area.

370

1 It's a -- nationally, it's a -- this
2 area is an area that train traffic slows down in
3 and it's very hard to move trains through the
4 Chicago area. It's one of the proposed grade
5 separations in the --
6 JUDGE TATE: I think the question was, What is
7 the stage of the planning?
8 MR. SHUMATE: Yes.
9 JUDGE TATE: Now, that is a time question.
10 THE WITNESS: It's preliminary.
11 BY MR. SHUMATE:
12 Q. Okay. Mr. Sturm, you indicated this is a
13 part of the Create Project, these bridges?
14 A. Yes.
15 Q. And the Create Project is a federally
16 funded state and city of Chicago project?
17 MS. DICKSON: Objection.
18 JUDGE TATE: That has nothing to do with this.
19 MR. SHUMATE: Your Honor, if I might rephrase
20 the question.
21 BY MR. SHUMATE:
22 Q. Is this an over-a-billion-dollar project

371

1 Q. It's less than a mile?
2 A. Yes.
3 Q. And there's two major bridges, then, that
4 will go over the Union Pacific Railroad?
5 MS. DICKSON: Objection.
6 BY MR. SHUMATE:
7 Q. Or underpasses?
8 MS. DICKSON: Relevance.
9 JUDGE TATE: This is preliminary planning. We
10 have no idea when it's going to start, probably
11 no idea when it's supposed to be finished. It
12 sounds like a wonderful plan but it's not what
13 we're here about.
14 BY MR. SHUMATE:
15 Q. Mr. Sturm, if the bridges that are
16 proposed on the various plans come into
17 existence, would it make the crossing at Old Kirk
18 Road even more redundant?
19 MS. DICKSON: Objection. Relevant.
20 MR. SHUMATE: It is truly relevant.
21 MS. DICKSON: How is whether there's a bridge
22 to the east of Old Kirk relevant to --

373

1 that --
2 JUDGE TATE: You're back on it again.
3 MR. SHUMATE: Yes, your Honor. I'm trying to
4 have show that --
5 JUDGE TATE: You're talking about a project
6 that Union Pacific is probably going to try to
7 carry out all over the country. We are concerned
8 only with this crossing in Geneva.
9 BY MR. SHUMATE:
10 Q. Mr. Sturm, is the Create Project just in
11 the collar counties and the city of Chicago?
12 JUDGE TATE: I don't care about anything with
13 the Create Project. Get off of it.
14 BY MR. SHUMATE:
15 Q. Will there be federal funding for these
16 two bridges?
17 MS. DICKSON: Objection. Again, your Honor,
18 this is all to the east, whether there are
19 bridges or no bridges have no relevance.
20 BY MR. SHUMATE:
21 Q. How far to the east is this Old Kirk Road?
22 A. Approximately seven-tenths of a mile.

372

1 MR. SHUMATE: It's not necessary for public
2 access.
3 MS. DICKSON: For the businesses that are
4 lying north of the crossing, the bridges that
5 there might be east of this have any relevance at
6 all.
7 MR. SHUMATE: Absolutely relevant.
8 JUDGE TATE: Not unless they're there and
9 they're not.
10 BY MR. SHUMATE:
11 Q. Okay. Mr. Sturm, you indicated that these
12 three documents that you brought today were
13 prepared -- they're preliminary in nature; is
14 that correct?
15 A. That's correct.
16 Q. And they're prepared by an engineering
17 firm and what was the name?
18 A. McDonough & Associates, Incorporated.
19 Q. And do you know who hired McDonough &
20 Associates, Incorporated?
21 A. They were retained for Roosevelt Road with
22 DuPage County. And for this project here,

374

1 they're working with the City of Geneva and Kane
2 County.

3 Q. So when you say "this project here,"
4 you're talking about the project on Kirk Road?

5 A. Kirk Road.

6 Q. Okay. And, so, this Kirk Road Project is
7 part of that preliminary project?

8 A. Yes.

9 Q. So it is preliminary in nature and it's
10 not for sure; that is correct?

11 A. That's correct.

12 Q. Just as the other bridge is; is that
13 correct?

14 A. Correct.

15 Q. Now, on this plan as it has been
16 preliminarily drafted is Old Kirk Road shown?

17 A. Yes, it is. Old Kirk Road is showing.

18 Q. Does it show a movement of Old Kirk Road
19 to the east of its present location?

20 A. Yes, it does.

21 Q. And could you indicate where that is on --
22 this is Petitioner's Exhibit No. 6; is that

375

1 show what has been planned by Kane County or on
2 behalf of Kane County.

3 JUDGE TATE: Sustained.

4 BY MR. SHUMATE:

5 Q. Mr. Sturm, the intersection of Old Kirk
6 Road and Route 38 is currently configured, can
7 you make a left and a right-hand turn?

8 A. Yes, you can.

9 Q. And that would provide access for all of
10 the vehicles that are north of the Railroad's
11 tracks that would need ingress and egress onto
12 Roosevelt Road; is that correct?

13 A. That's correct.

14 Q. Mr. Sturm, you're in charge of all of the
15 engineering and all of the crossings for the
16 Metra territory that's served by the Union
17 Pacific Railroad; is that correct?

18 A. Correct.

19 Q. Are there many crossings in that territory
20 that are at-grade?

21 MS. DICKSON: Objection. Relevance.

22 MR. SHUMATE: You brought up the issue -- I'll

377

1 correct?

2 A. That's correct.

3 Q. Could you indicate where that is for the
4 Judge.

5 MS. DICKSON: Objection. Relevance, I must
6 say, Mr. Shumate has objected to any testimony
7 relative to whether there is going to be a future
8 restriction of ingress/egress to Old Kirk Road
9 and, yet, he wants to bring in evidences relative
10 to a proposed movement of the road, which is in a
11 proposal stage and is not present today, it's not
12 concrete today. I believe he's attempting to
13 have it both ways. He wants to talk about what
14 Kirk Road is today, but he also wants to talk
15 about what Kirk Road is in the future.

16 MR. SHUMATE: The testimony that's been given
17 by the Township, your Honor, is based clearly on
18 a plan that has been recognized by your Honor as
19 preliminary and that any of the modifications to
20 this road are just as preliminary as all the
21 other discussion that's been -- and testimony
22 that's been given. And, so, I was just trying to

376

1 tie it up, your Honor, with regards to safety.

2 JUDGE TATE: Proceed.

3 BY MR. SHUMATE:

4 Q. Are there other at-grade crossings on the
5 Metra territory?

6 A. Yes, there are.

7 Q. If you have an at-grade crossing or an
8 underpass or overpass, which would the Railroad
9 prefer?

10 A. We would prefer the grade separation and
11 an overpass or an underpass.

12 Q. As opposed to an at-grade crossing?

13 A. Yes.

14 Q. There was questions given to Mr. Andryuk
15 as to why the Railroad would want to close this
16 particular crossing at Old Kirk Road. What are
17 the reasons for that desire to close that
18 crossing for the Union Pacific?

19 A. In addition to its redundancy, it's a
20 grade crossing that there are -- there is an
21 alternative and fairly easy alternative route for
22 vehicles to use. It's also a grade crossing that

378

1 I believe the record speaks that there's been --
 2 scratch that.
 3 As far as the accident history, I think
 4 we talked about that in the previous hearing. In
 5 the present year, we do have numerous broken
 6 gates at this crossing. Engineers have --
 7 MS. DICKSON: Objection. This is the first
 8 time we've heard any evidence at all about broken
 9 gates at this crossing. If there's going to be
 10 testimony to that, then all of those reports
 11 should be tendered to this proceeding.
 12 MR. SHUMATE: You can ask for them if you want
 13 them.
 14 JUDGE TATE: I don't want them. I don't want
 15 them as a part of the record.
 16 MS. DICKSON: I object.
 17 JUDGE TATE: What do broken gates have to do
 18 with the reasons for closing or not closing this
 19 crossing? Vandalism was never brought up by
 20 Petitioner.
 21 MR. SHUMATE: We're not suggesting vandalism,
 22 your Honor. I'll do it on redirect.

379

1 this proceeding before.
 2 MR. SHUMATE: I don't know that that is the
 3 correct answer, your Honor. I'd have to look at
 4 the testimony. But I would believe that
 5 Mr. Linneman would have mentioned that, with
 6 regard to gate repairs; but I could be wrong.
 7 I have no further questions, your Honor,
 8 for Mr. Sturm.
 9 JUDGE TATE: Miss Dickson?
 10 CROSS-EXAMINATION
 11 BY
 12 MS. DICKSON:
 13 Q. Mr. Sturm, how many at-grade crossings are
 14 in the Metra territory that you testified having
 15 knowledge to?
 16 A. 200. I have approximately 200.
 17 Q. Have there been accidents at any of those
 18 other 200 at-grade crossings?
 19 A. Yes.
 20 Q. Are those at-grade crossings signalized?
 21 A. Yes.
 22 Q. And is visibility good at those at-grade

381

1 MS. DICKSON: You're on direct.
 2 MR. SHUMATE: I'm off.
 3 MS. DICKSON: No, I'm not. This is still your
 4 direct.
 5 MR. SHUMATE: Oh, I apologize.
 6 BY MR. SHUMATE:
 7 Q. Mr. Sturm, you indicated that there were
 8 broken gates. Why are there broken gates?
 9 JUDGE TATE: No. I just said that I didn't
 10 want to hear about the broken gates.
 11 BY MR. SHUMATE:
 12 Q. Mr. Sturm, do gates get broken when cars
 13 drive around them?
 14 JUDGE TATE: Oh, my goodness, we're back to
 15 the broken gates again. Are broken gates one of
 16 the reasons for closing this crossing?
 17 MR. SHUMATE: If people are driving around the
 18 gates, yes, your Honor.
 19 JUDGE TATE: People drive around gates all the
 20 time.
 21 MR. SHUMATE: And it's against the law.
 22 JUDGE TATE: This has never been brought up in

380

1 crossing?
 2 A. Most of them. Most of them have good
 3 visibility.
 4 Q. Where there have been accidents at those
 5 at-grade crossings which have good visibility and
 6 signalization, has the Union Pacific sought to
 7 close those at-grade crossing?
 8 A. Some of them we have.
 9 Q. Okay. Now, compared -- and has the UP
 10 been successful in closing those at-grade
 11 crossing?
 12 A. Some of them we have.
 13 Q. Has there been accident history at this
 14 at-grade crossing?
 15 A. I'd have to refer back to previous
 16 testimony.
 17 Q. Are you aware of any previous testimony
 18 that there was any accident history?
 19 A. I seem to recall a fatality at this
 20 crossing.
 21 MS. DICKSON: We'd like the opportunity to
 22 call Mr. Sturm on -- when we have our case, your

382

1 Honor, so that he has the opportunity to have
2 reviewed the testimony relative in this hearing
3 to determine whether that statement is, in fact,
4 correct.

5 MR. SHUMATE: No objection.

6 JUDGE TATE: You may.

7 MS. DICKSON: I don't have anything further
8 for this witness.

9 JUDGE TATE: Mr. Berry?

10 MR. BERRY: I have no questions for this
11 witness.

12 JUDGE TATE: I didn't hear you.

13 MR. BERRY: No. I have no questions for this
14 witness.

15 JUDGE TATE: Thank you.

16 MR. SHUMATE: No further questions, your
17 Honor.

18 JUDGE TATE: Thank you, Mr. Sturm.

19 Do you have another witness?

20 MR. SHUMATE: Just a last one, your Honor.
21 Dick Untch.
22

383

1 Old Kirk Road?

2 A. I am.

3 Q. And have you had an opportunity to visit
4 that site?

5 A. Yes, I have.

6 Q. Based on the records that the -- it's the
7 City of Geneva maintains, does the City of Geneva
8 have any corporate boundary interest with regard
9 to the territory which is the subject of today's
10 hearing?

11 A. Yes, it does.

12 Q. And what is that interest?

13 A. The corporate limits of the City of Geneva
14 encompass the Union Pacific Railroad
15 right-of-way. It extends out to this area. It
16 extends through the Old Kirk intersection from
17 the west and terminates some distance just short
18 of the Kane/DuPage County line to the east.

19 Q. I see. Yet, what we referred to as Old
20 Kirk Road, is it technically a Township Road?

21 A. Yes, it is.

22 Q. And for that portion of that Township road

385

1 ADICK UNTCHÁ,
2 called as a witness herein, having been
3 previously duly sworn, was examined and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY

7 MR. SHUMATE:

8 Q. Would you state your name for the record,
9 please.

10 A. Dick Untch.

11 Q. And would you spell that.

12 A. That's D-i-c-k, U-n-t-c-h.

13 Q. And, Mr. Untch, by whom are you currently
14 employed?

15 A. By the City of Geneva.

16 Q. And in what capacity?

17 A. I'm the community development developer
18 for the City.

19 Q. And how long have you had that position?

20 A. For a little over five years.

21 Q. Are you familiar with the grade crossing
22 which is the subject matter of today's hearing at

384

1 that's on the Railroad's right-of-way, that is
2 within the Village of -- excuse me, the City of
3 Geneva?

4 A. That is correct.

5 Q. Would the City of Geneva have jurisdiction
6 over that portion of the road?

7 A. That's my understanding. I believe that
8 would be the case, yes.

9 Q. Now, has a -- an article appeared in the
10 Daily Herald which has been referenced in this
11 hearing. Are you familiar with that article?

12 A. I am.

13 Q. This plan that's referred to as the Geneva
14 Condos Proposed, has this plan, in fact, been
15 submitted or plans similar to it to the City of
16 Geneva?

17 A. There has been an application for
18 development review formally submitted to the
19 City.

20 Q. And are you familiar with that?

21 A. Yes, I am.

22 Q. Do you have a copy of that here today that

386

1 you can refer to?

2 A. Yes, I do.

3 Q. And could you summarize what that plan is?

4 A. The application requests annexation to the

5 City of Geneva, rezoning of the property and the

6 establishment of a planned unit development and

7 preliminary planned unit development plan

8 approval. The subject realty consists of

9 approximately 32 acres. The subject realty

10 flanks -- excuse me, involves the southwest and

11 southeast corners of the intersection of New Kirk

12 and 38 and then extends further east to encompass

13 a tract of land that would be located off the

14 southeast corner of Route 38 and Old Kirk.

15 The plan encompasses a mixed use

16 development that is proposed incorporating

17 commercial, office and industrial uses, as well

18 as a commercial and residential component.

19 Q. When was this application filed with the

20 City of Geneva?

21 A. It was tendered to the City on

22 October 1st, 2003.

387

1 BY MR. SHUMATE:

2 Q. This plan that's been submitted and it

3 will have to go through several boards and votes

4 before it would be finally adopted by the City;

5 is that correct?

6 A. That is correct.

7 Q. It would have to go before a plan

8 commission?

9 A. Yes.

10 Q. Would it then have to go before a zoning

11 board?

12 A. The plan commission serves as the zoning

13 entity.

14 Q. So it's combined?

15 A. That's correct.

16 Q. And then after it goes through those two

17 hurdles then it would go before the -- is it the

18 board of trustees or is it the alderman?

19 A. It would be the City Council first at the

20 committee level. The committee as a whole and

21 the City Council would receive the recommendation

22 of the plan commission and then the matter would

389

1 Q. And prior to that filing, were there any

2 other discussions with this -- either the staff

3 or governmental officials in the City of Geneva

4 with regard to what's been referred to as the

5 Geneva East Gateway?

6 A. Yes. There were staff level discussions

7 with the representative of the applicants in the

8 application. And those discussions, I believe,

9 started in the late spring, maybe early summer of

10 2003.

11 Q. As proposed, does the plan meet the zoning

12 requirements of the City of Geneva?

13 MS. DICKSON: Objection. Relevance.

14 MR. SHUMATE: The relevance is whether the

15 plan can go forward and if it goes forward then

16 the public roads would be part of that which

17 would --

18 JUDGE TATE: Well, it was my understanding

19 that the application requests annexation and

20 rezoning.

21 THE WITNESS: That is correct.

22 MR. SHUMATE: Let me back up, then.

388

1 be taken up for action by the City Council.

2 Q. Okay. So right now it is a proposal from

3 a developer; is that correct?

4 A. That is correct.

5 Q. And it's a -- part of that would be a

6 potential for annexation into the City of Geneva;

7 correct?

8 A. That's correct.

9 Q. And the City of Geneva, you've testified,

10 already does have some property this far east

11 with regards to its boundaries, that being the

12 railroad right-of-way; is that correct?

13 A. Yes.

14 Q. With regard to this proposal, you would

15 characterize it as a preliminary plan; is that

16 correct?

17 A. Yes.

18 Q. And does it have, as part of the plan, any

19 modification to Old Kirk Road?

20 MS. DICKSON: Objection to the line of

21 questioning relative to this plan. We've got

22 testimony -- it's preliminary, we've had

390

1 testimony that it's a preliminary plan that's
 2 been tendered by a developer to the City. We
 3 know that it will have to go through a number of
 4 different boards and bodies before it's even
 5 approved. And because of the very conceptual
 6 nature of it, it's not relevant to the
 7 proceedings here today.
 8 BY MR. SHUMATE:
 9 Q. This is a preliminary plan; correct?
 10 A. Correct.
 11 Q. Has the City of Geneva been involved with
 12 any of the planning concerning the intersection
 13 of Kirk Road and Roosevelt Road?
 14 A. On a staff level, we have participated in
 15 meetings conducted by KDOT -- Kane County
 16 Division of Transportation and IDOT.
 17 Q. Is that a preliminary plan?
 18 A. The plans for the intersection?
 19 Q. Yes, sir.
 20 A. It's my understanding that that is a
 21 Phase 1 design study.
 22 Q. You brought some other documents with you.

391

1 has it been prepared by the Developer, the
 2 developers who made the application?
 3 A. This has been prepared by the developer,
 4 by the applicant.
 5 Q. So it's not the City's concept plan?
 6 A. It is not.
 7 Q. Okay. So it's a proposal that's been
 8 brought independently to the City?
 9 A. That is correct.
 10 Q. Do you have any other plans?
 11 A. I also -- and, again, I'm not sure how far
 12 to extend into this, but I did bring one set of
 13 the engineering documents that were referred to
 14 in the earlier testimony. That document combined
 15 with two other sheets make up a part of the
 16 applicant's submittal.
 17 Q. Okay. So these plans haven't been
 18 prepared by the City of Geneva they've just been
 19 filed with the City of Geneva?
 20 A. That's correct. These have been filed by
 21 the applicant.
 22 Q. Has Staff reviewed those plans?

393

1 What are they?
 2 A. I have brought a copy of the notice of the
 3 public hearings that are before the plan
 4 commission scheduled before the plan commission.
 5 Q. And when are those scheduled to take
 6 place?
 7 A. The initial hearing was advertised as
 8 required by our ordinance requirements to take
 9 place on January 8th. That hearing was continued
 10 to February 12th.
 11 Q. Okay. So you haven't had your first
 12 hearing on this yet?
 13 A. That's correct.
 14 Q. What other plans do you have?
 15 A. I also have a group of plan sheets that's
 16 labeled, Conceptual plan prepared by the Lannard
 17 Group (phonetic). It is -- I have been referring
 18 to this reduced copy. This is a larger scaled
 19 copy of this colored document that shows the
 20 conceptual plan that I referred to earlier.
 21 Q. Is this -- this conceptual plan, is it
 22 something that the City of Geneva has prepared or

392

1 A. The Staff has conducted some review of the
 2 plans, but they are still under Staff review.
 3 Q. Okay. From your review as proposed by the
 4 developer, does it qualify under your zoning
 5 requirements?
 6 MS. DICKSON: Objection. First they're
 7 applying for rezoning, so it can't, therefore,
 8 meet current zoning and whether in his opinion it
 9 meets them or not isn't relevant.
 10 MR. SHUMATE: I know they're applying for
 11 rezoning. The question is, as they've been
 12 redrawn and there's lots of ways of qualifying
 13 through rezoning. I just asked, Do they qualify
 14 under the current zoning laws now.
 15 JUDGE TATE: Obviously they don't, if they
 16 have to ask for rezoning.
 17 MR. SHUMATE: I will withdraw the question.
 18 BY MR. SHUMATE:
 19 Q. Has the City of Geneva prepared any plans
 20 independent of these developer plans with regard
 21 to the -- what's been referred to as the Geneva
 22 Eastern Gateway?

394

1 A. The city has adopted a comprehensive plan
2 for the entire city and that comprehensive plan
3 designates various parcels of land in the
4 vicinity of the subject parcel for land uses.

5 Q. Does this proposal fit with the
6 comprehensive plan of the City of Geneva?

7 MS. DICKSON: Objection. Relevance.

8 MR. SHUMATE: It's clearly relevant if it fits
9 with their proposal for their plan of their town,
10 whether this would ever have a chance of coming
11 to fruition.

12 MS. DICKSON: Well, we won't know whether it
13 comes to fruition or not until the City Council
14 approves it.

15 MR. SHUMATE: Yes, but we can understand
16 whether it complies with their City's -- what did
17 you call the plan?

18 THE WITNESS: Comprehensive plan.

19 JUDGE TATE: Objection sustained.

20 BY MR. SHUMATE:

21 Q. Did you bring any other documentation with
22 you?

395

1 where it currently intersects with Route 38.

2 Q. Was there any traffic signalization
3 proposed with Mr. Coulter's analysis?

4 A. Mr. Colter's analysis examines two
5 alternatives in the vicinity of Route 38 east of
6 New Kirk -- excuse me, the potential for a signal
7 at Old Kirk and the potential for a signal at Elm
8 Road, which is a thousand feet to the east.

9 Q. When you say "a thousand feet to the
10 east," a thousand feet of -- from Old Kirk Road?

11 A. Correct.

12 Q. Did Mr. Coulter have any other accesses
13 proposed onto Roosevelt Road?

14 MS. DICKSON: Objection. Relevance of
15 these -- of Brent Coulter's proposed access
16 routes to Route 38 as being contained as part of
17 a development that's being proposed to the City
18 of Geneva.

19 MR. SHUMATE: Mr. Coulter was the expert
20 witness of the Township and he testified with
21 regard to a signalization and the possibility of
22 it at Old Kirk Road and that there was no

397

1 A. I do have one other document. I also have
2 what has been submitted -- what has been
3 submitted with the application. It is an access
4 and traffic analysis prepared for the application
5 by Brent Coulter.

6 Q. And who is Brent Coulter?

7 A. He is a traffic engineer with Cemcom,
8 Limited (phonetic).

9 MR. SHUMATE: Let the record show that I
10 believe Mr. Brent Coulter has testified in this
11 on behalf of the Township in his capacity as an
12 expert on traffic count.

13 MS. DICKSON: I concur with that.

14 JUDGE TATE: Yes, that's true.

15 BY MR. SHUMATE:

16 Q. So this again is just part of the
17 application from the developer?

18 A. That is correct.

19 Q. As part of the application, was there any
20 reconfiguration of Old Kirk Road?

21 A. As a part of the application, yes. Old
22 Kirk Road is shown shifted slightly to the east

396

1 accesses elsewhere onto Roosevelt Road to the
2 west of Kirk Road. And now we have a traffic
3 plan which he put together which has proposals to
4 form accesses to Roosevelt Road west of Kirk
5 Road.

6 JUDGE TATE: And when is the public going to
7 have access by this road?

8 MR. SHUMATE: That would be up to the City of
9 Geneva whether it passes it or not.

10 JUDGE TATE: All right. Sustained.

11 BY MR. SHUMATE:

12 Q. Is there a time frame that this particular
13 proposal from this developer has before there
14 would be a potential for an annexation based on
15 your experience?

16 A. The time frame for City action on this
17 matter is, at this point, uncertain. The -- one
18 of the critical elements of the City's
19 consideration of this proposal is one of the
20 access that would be granted by IDOT and KDOT to
21 the site and this plan -- as I understand it,
22 this plan may change depending on the nature of

398

1 access that's granted to the site by KDOT and
2 IDOT.

3 Q. In any event, access to Route 38 would be
4 a necessary component of this complete plan; is
5 that correct?

6 A. Of this plan, absolutely.

7 Q. And that would be both to the west and to
8 the east of Kirk Road?

9 A. Are you speaking New Kirk?

10 Q. Kirk Road, yes, New Kirk Road, yes.

11 A. Yes. Access would be required both east
12 and west of New Kirk for this plan to move
13 forward.

14 MR. SHUMATE: And let the record show when he
15 refers to New Kirk Road I believe you mean Kirk
16 Road.

17 THE WITNESS: Kirk Road, yes.

18 MR. SHUMATE: I appreciate you giving us the
19 fact evidence of where we stand now and where it
20 stands in Geneva. I appreciate it.

21 No further questions, your Honor.

22 JUDGE TATE: Miss Dickson?

399

1 without children so as not to affect the school
2 system.

3 Do you find anything difficult about
4 that?

5 A. Difficult? What he's referring to there
6 is a long-standing policy of the City of Geneva
7 and Geneva -- the Geneva school district to
8 control use and development of lands for
9 residential purposes on the east side of Geneva,
10 to such an extent that new development does not
11 generate additional school children and it's a
12 function of the facility challenges that the
13 school district faces, particularly with regard
14 to elementary schools. On the east side of
15 Geneva there is one elementary school that now,
16 I'm told, is approaching 850 or 900 elementary
17 school students, so it's a very large elementary
18 school.

19 So from the standpoint of City policy,
20 the City has planned much of its eastern area of
21 growth between -- it's vacant land currently --
22 between Kirk Road and Kautz Road and Kautz Road

401

1 MS. DICKSON: I don't have any questions for
2 this witness, your Honor.

3 JUDGE TATE: Mr. Berry?

4 MR. BERRY: No questions for this witness.

5 EXAMINATION

6 BY

7 JUDGE TATE:

8 Q. Mr. Untch, referring you to the newspaper
9 article that appeared about this plan, is this
10 the plan that you're talking about?

11 A. Yes, it is.

12 Q. All right. The spokesperson for this
13 project, the project's land development
14 consultant is Michael Donahue, is he part -- if
15 you know, is he part of the developing entity?

16 A. He is a consultant hired by an ownership
17 group that has been formed consisting of five
18 property owners that own the subject realty.

19 Q. All right. I'm wondering what influence
20 Mr. Donahue has or if he's just reflecting the
21 thinking of the owners when he says, The
22 development will be aimed at younger couples

400

1 extended down to what would be Fabian Parkway,
2 that whole quadrant is planned for commercial
3 office and light industrial use.

4 Q. All right. There will be 232
5 condominiums. Does the city control in some way
6 the reproductive qualities -- business of young
7 couples? It would seem to me they have children
8 in less than nine months.

9 A. The comment was made, I believe by
10 Mr. Donahue in the interest of conveying that --
11 it's the intention of his client, the developers
12 here to develop a type of housing product that
13 would be more in keeping with the lifestyle of
14 either young professionals or empty nesters or
15 retired folks and that their target market would
16 not be a family --

17 Q. I can understand that, but whatever their
18 target market is, if the people are in there, do
19 they have to move out after they have a child?

20 A. No.

21 Q. This is the most ridiculous statement I've
22 ever seen in my life. You can only stay nine

402

1 months or else out?
 2 JUDGE TATE: Anything else?
 3 Mr. Shumate?
 4 MR. SHUMATE: No. At in point, your Honor,
 5 what we'd ask to do is that the exhibits -- the
 6 tape, which has been marked as Petitioner's
 7 Exhibit 3 and that the newspaper article, which
 8 has been marked as Petitioner's Exhibit 4 and the
 9 one City of Geneva print that was brought into
 10 our discussion, that's Petitioner's -- it's
 11 City's Exhibit No. 1 and that those would be
 12 entered into evidence.
 13 I will not tender the general documents
 14 that Mr. Sturm had referenced with regard to
 15 general development along Route 38, nor the
 16 documents that have been -- the other documents
 17 that have been brought by the City of Geneva
 18 because they are speculative in nature, they are
 19 proposals and based your rulings, I would not
 20 assume that they would be entered into evidence
 21 included --
 22 MR. BERRY: What about the tape?

403

1 to have this Eastern Gateway, but it's --
 2 JUDGE TATE: We'll just keep it handy and
 3 decide later what to do with it.
 4 Any objection to the admission of UP's
 5 Exhibits 3, 4 and City's No. 1?
 6 MS. DICKSON: With respect to your Honor's
 7 previous ruling relative to the admission of new
 8 evidence, while I respect the ruling, I would,
 9 for the record, make an objection to the new
 10 evidence coming in; but understand that the Court
 11 has previously allowed such evidence.
 12 JUDGE TATE: Petitioner's Exhibits 3 and 4 and
 13 City of Geneva Exhibit 1 are admitted into
 14 evidence.
 15 (Whereupon, Petitioner's
 16 Exhibit No. 3 and 4 were
 17 admitted into evidence as
 18 of this date.)
 19 (Whereupon, City of Geneva
 20 Exhibit No. 1 was
 21 admitted into evidence as
 22 of this date.)

405

1 JUDGE TATE: He mentioned the tape.
 2 MR. SHUMATE: I did the tape first so I'd
 3 offer that, your Honor.
 4 JUDGE TATE: You're offering 3 through 7?
 5 MS. DICKSON: No.
 6 JUDGE TATE: Which did you leave off?
 7 MR. SHUMATE: I included the -- I'll do it
 8 again. The tape which is No. 3.
 9 JUDGE TATE: The newspaper article.
 10 MR. SHUMATE: The newspaper article, which is
 11 No. 4, the one print from the City, which is City
 12 No. 1 and.
 13 JUDGE TATE: 5, 6 and 7, you haven't mentioned
 14 those.
 15 MS. DICKSON: He's not seeking to admit those.
 16 MR. SHUMATE: No. I wasn't seeking to admit
 17 those.
 18 JUDGE TATE: Okay. That's what I'm asking
 19 you.
 20 MR. SHUMATE: Other than if you would want
 21 this for your comments, I would -- that would be
 22 acceptable, certainly to the Railroad if you want

404

1 JUDGE TATE: Miss Dickson?
 2 MS. DICKSON: Your Honor, at this time, I
 3 would respectfully request the opportunity to
 4 review the testimony that was presented this
 5 morning with my client, Mr. Carlson, and with our
 6 other witnesses that we have present to determine
 7 whether we do have, in fact, need any testimony
 8 to come in to offset or counter any of the
 9 evidence and also to allow Mr. Sturm the
 10 opportunity to review the prior testimony that's
 11 been given so that he can determine whether the
 12 answer relative to accident history is correct.
 13 And I would ask for a short period of time in
 14 which to do that; and, certainly, if I won't need
 15 any time to do so, I would notify the -- notify
 16 you and Mr. Shumate.
 17 MR. SHUMATE: I have no objection to that,
 18 your Honor, but I would also add to it that in a
 19 discussion with the City of Geneva officials
 20 yesterday, they indicated that they may want to
 21 come before you at a future date. I told them
 22 that I thought that this case would not end today

406

1 and that it would be continued for purposes of
2 the Township's response.
3 JUDGE TATE: How long is a short period,
4 Miss Dickson?
5 MS. DICKSON: I'm not sure what the -- the
6 City would be asking for -- I guess, for purposes
7 of the transcript. If we could have it sometime
8 after the tender of the transcript at regular
9 delivery, so that my client doesn't pay any
10 higher costs for that.
11 MR. SHUMATE: No objection.
12 MS. DICKSON: So sometime at the end of
13 February, perhaps, or the beginning of March to
14 allow the City of Geneva.
15 MS. DICKSON: Yes, that's what I'm thinking.
16 JUDGE TATE: Let's put it Wednesday March 3rd.
17 How is that Mr. Berry?
18 MR. BERRY: That's fine.
19 MR. SHUMATE: What time, your Honor.
20 JUDGE TATE: I have whatever time you'd like.
21 What's preferable?
22 MR. SHUMATE: Is 9:00 okay or do you want it

407

1 at 10:00?
2 MS. DICKSON: 9:00 o'clock.
3 JUDGE TATE: 9:00 o'clock. This matter is
4 continued to March 3rd, 2004 at 9:00 a.m.
5 (Whereupon, the hearing in the
6 above-entitled matter was
7 continued until March 3, 2004,
8 at 9:00 a.m.)
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408

<p>1</p> <p>1 [9] 3:17 47:17 101:21 113:11 114:12 115:5,13,20 1.18 [1] 70:10 1.2 [3] 69:16 70:9,11 10 [2] 7:14 13:11 10:00 [1] 118:1 101 [1] 4:19 12th [3] 30:10 33:14 102:10 16-wheeler [2] 62:20 63:5 16th [1] 69:22 174 [1] 4:13 18(c)741 [1] 73:14 1920 [1] 4:20 1st [1] 97:22</p>	<p>15,18 77:21,22 78:1 85:22 114:13 60 [1] 60:7 60134 [1] 44:7 60187 [2] 1:22 5:3 60606 [2] 1:19 4:20 62701 [1] 5:10</p>	<p>admission [2] 115:4,7 admit [2] 114:15,16 admitted [3] 115:13,17,21 adopted [2] 99:4 105:1 adverse [9] 18:14 68:21 69:4,5,14,15 71:14,16 73:6 adversely [1] 57:10 advertised [1] 102:7 affect [1] 111:1 agent [1] 16:20 ago [2] 13:7 18:6 agreeable [1] 79:12 ahead [1] 20:20 aimed [1] 110:22 alderman [1] 99:18 alignment [9] 49:15 50:4,9,11,18 51:5,13 59:20 60:11 allegation [1] 7:17 alleged [1] 13:19 alleges [1] 14:4 alleging [1] 7:14 allocated [1] 61:3 allow [9] 10:8 11:10 27:7 42:20 50:22 55:13 116:9 117:14 allowed [5] 11:18 12:15 43:19 72:13 115:11 allowing [1] 10:3 almost [1] 11:2 already [9] 9:8 74:15 100:10 alternative [9] 28:20 63:1,4 79:11 88:21,21 alternatives [1] 107:5 although [1] 70:7 ample [1] 27:20 analysis [4] 44:10 106:4 107:3,4 andryuk [24] 3:3 5:13 10:11 15:15 16:10 19:6 25:9 26:4 29:8 33:2 35:9 36:4 43:18 44:1,13,21 45:19 46:21 47:21 59:20 65:8 72:22 74:22 88:14 andryuk's [1] 43:5 andryuká [1] 16:1 annexation [4] 97:4 98:19 100:6 108:14 annexed [1] 15:10 another [9] 21:4,20 24:11 31:19 67:19 75:1 79:14,20 93:19 answer [9] 29:14 48:17 51:8 63:21 91:3 116:12 apologize [2] 70:3 90:5 apparently [1] 51:11 appear [3] 11:9 30:7,12 appearance [1] 7:2 appearances [2] 1:17 4:16 appeared [3] 7:4 96:9 110:9 appearing [2] 2:3 5:3 appears [1] 27:3 applicant [2] 103:4,21 applicant's [1] 103:16 applicants [1] 98:7 application [18] 7:15,21 13:11,19 14:3,4,6 96:17 97:4,19 98:8,19 103:2 106:3,4,17,19,21 applications [1] 14:1 apply [1] 8:6</p>	<p>applying [2] 104:7,10 appreciate [2] 109:18,20 approaches [2] 23:10 49:8 approaching [2] 22:20 111:16 appropriate [3] 54:3 58:20 61:7 approval [2] 48:22 97:8 approved [4] 42:2 58:19 61:7 101:5 approves [1] 105:14 approximate [1] 31:3 approximately [12] 18:6 19:1 27:14 59:22 60:1,7 70:9,10 76:15 82:22 91:16 97:9 approximation [1] 60:3 architectural [1] 47:3 area [29] 18:8,17 19:8,11 20:18 21:2,9 22:20 24:4 32:8,18 34:10,14 35:5 37:3 46:4 49:5 57:12 61:20 62:5 63:7 64:10 80:18,22 81:2,2,4 95:15 111:20 areas [1] 57:1 aren't [1] 43:19 argument [1] 8:4 arick [1] 75:5 around [10] 21:22 24:21 35:3 38:9,14 39:3 57:6 90:13,17,19 31:18 33:13,18 35:6 39:10 40:13 96:9,11 110:9 113:7 114:9,10 asks [1] 9:22 associated [1] 44:15 associates [4] 5:2 76:19 84:18,20 assume [2] 66:18 113:20 at-grade [18] 13:13 53:10,13 67:22 69:9 79:18 87:20 88:4,7,12 91:13,18,20,22 92:5,7,10,14 athomas [1] 16:1 attached [2] 11:14 12:19 attempted [1] 9:1 attempting [3] 66:3 67:21 86:12 attend [1] 7:1 attention [9] 10:14 13:3 32:9 attorney [2] 4:18 46:2 authorities [1] 58:20 authority [1] 61:8 available [3] 43:20 72:12 76:5 avenue [2] 2:2 5:10 aware [23] 28:11,20 29:16 39:17,19 50:6,12 52:20 53:15,22 54:8,10,12,21 55:3,6 56:8 62:11 65:18 66:11 73:10 74:13 92:17 away [2] 58:2,3</p>
<p>2</p> <p>200 [3] 91:16,16,18 2001 [1] 11:9 2003 [3] 30:10 97:22 98:10 2004 [3] 1:13 118:4,7 203 [1] 5:2 22 [1] 44:6 232 [1] 112:4 24 [1] 16:19 25 [2] 20:4,5 28 [2] 1:13 21:12 294 [2] 3:11,14</p>	<p>7</p> <p>7 [7] 31:7,10 76:10 77:17 78:3 114:4,13 700 [4] 20:13 23:16 66:15,18</p> <p>8</p> <p>850 [1] 111:16 8th [1] 102:9</p> <p>9</p> <p>9:00 [6] 1:14 117:22 118:2,3,4,8 900 [1] 111:16 986h [1] 4:13</p>	<p>A</p> <p>a-n-d-r-y-u-k [1] 16:10 a.m [3] 1:14 118:4,8 able [2] 14:17 40:3 ably [1] 13:15 above [2] 31:7,9 above-entitled [1] 118:6 absolutely [2] 84:7 109:6 acceptable [1] 114:22 accepting [1] 29:11 access [28] 24:8 25:4,8 26:11 27:7 28:8 34:22 36:7,17 37:6,8 39:14 40:2,21 43:2 44:10 53:9 56:10,12 84:2 87:9 106:3 107:15 108:7,20 109:1,3,11 accesses [4] 21:16 107:12 108:1,4 accessway [1] 40:16 accident [9] 52:21 53:1,5 65:18,20 89:3 92:13,18 116:12 accidents [2] 91:17 92:4 accommodate [1] 28:7 accordance [1] 4:5 accuracy [1] 33:18 acknowledged [1] 61:3 acquisition [9] 42:7 50:3,8 acres [1] 97:9 across [3] 40:22 69:8 70:5 action [2] 100:1 108:16 actual [1] 50:1 actually [4] 39:20 40:20 46:22 70:10 add [2] 10:6 116:18 added [2] 10:16 79:2 addition [2] 31:18 88:19 additional [15] 8:19,21 9:16 11:17 12:2,5,12,13,17,19 14:18 32:1 52:10 75:22 111:11 additionally [1] 12:22 address [1] 5:9 adduced [1] 53:16 adequate [3] 27:18,19 66:6 adick [1] 94:1 administration [1] 67:5 administrative [3] 1:16 13:21 74:17</p>	<p>B</p> <p>b-o-n-d [1] 5:1 back [9] 20:18 23:16 62:2,9 71:6 82:2 90:14 92:15 98:22 barren [1] 37:7 barriers [1] 59:5 barry's [2] 14:12 58:12 based [13] 7:21 33:13 40:17 50:15,19 53:4 54:18 66:13 73:15 86:17 95:6 108:14 113:19 basic [1] 48:6</p>
<p>3</p> <p>3 [9] 31:9 113:7 114:4,8 115:5,12,16 118:7 3-7 [1] 4:2 306 [1] 3:3 32 [1] 97:9 326 [1] 3:3 33.75 [1] 4:13 337 [1] 3:17 349 [1] 3:3 355 [1] 3:3 363 [1] 3:3 365 [1] 3:4 365-degree [1] 20:7 38 [42] 23:6 28:13 29:18 30:1 31:12,19 33:4 34:7,11 37:17 42:16 48:22 49:10,14 50:14 54:2,6,12,14,18 55:1,2,14 56:4 58:9,22 59:7,9 72:15 76:14,16 77:1,9 78:17 87:6 97:12,14 107:1,5,16 109:3 113:15 381 [1] 3:4 384 [1] 3:5 3rd [2] 117:16 118:4</p>	<p>4</p> <p>4 [9] 3:11 30:7 31:9 71:15 113:8 114:11 115:5,12,16 40 [1] 60:7 400 [1] 3:5 405 [2] 3:11,17</p>	<p>5</p> <p>5 [9] 31:9 78:11,12,13 114:13 527 [2] 2:2 5:9</p>	<p>6</p> <p>6 [2] 3:14 20:12 23:16 31:7,9 66:1</p>
<p>4</p> <p>4 [9] 3:11 30:7 31:9 71:15 113:8 114:11 115:5,12,16 40 [1] 60:7 400 [1] 3:5 405 [2] 3:11,17</p>	<p>5</p> <p>5 [9] 31:9 78:11,12,13 114:13 527 [2] 2:2 5:9</p>	<p>6</p> <p>6 [2] 3:14 20:12 23:16 31:7,9 66:1</p>	<p>7</p> <p>7 [7] 31:7,10 76:10 77:17 78:3 114:4,13 700 [4] 20:13 23:16 66:15,18</p>
<p>5</p> <p>5 [9] 31:9 78:11,12,13 114:13 527 [2] 2:2 5:9</p>	<p>6</p> <p>6 [2] 3:14 20:12 23:16 31:7,9 66:1</p>	<p>7</p> <p>7 [7] 31:7,10 76:10 77:17 78:3 114:4,13 700 [4] 20:13 23:16 66:15,18</p>	<p>8</p> <p>850 [1] 111:16 8th [1] 102:9</p>

basically [7] 20:7 36:20 58:4 74:1 76:9,22 79:2
 basis [4] 11:10 33:12,21 63:7
 become [2] 42:11 48:8
 becomes [1] 23:10
 beginning [1] 117:13
 begun [2] 42:7 50:4
 behalf [5] 5:3 8:1 68:2 87:2 106:11
 behind [1] 28:4
 believe [4] 6:18 9:9,15 11:7,17 13:2 21:11,13 23:9 24:1 32:17,20 35:8 36:5,5,6,12 42:22 44:13 45:7 50:15 51:1,10 52:11 55:9 56:22 57:1,8 61:17 62:6,8 66:14 67:13 68:20 69:1,22 71:14 73:21 78:8 86:12 89:1 91:4 96:7 98:8 106:10 109:15 112:9
 believed [1] 9:4
 believes [2] 9:5 10:17
 below [2] 41:5,6
 bend [1] 21:22
 berry [2] 5:7,7 25:17,21 26:1 57:17,18,21 58:13,15 59:14,21 73:1,4 74:9,10,12,18,21 93:9,10,13 110:3,4 113:22 117:17,18
 best [1] 46:8
 better [2] 51:12,12
 between [4] 41:7,14,18 58:5 70:2,2 79:18 111:21,22
 beyond [1] 77:6
 bit [3] 63:15 78:6,7
 blocked [2] 37:8,14
 blowup [2] 78:2,5
 board [3] 42:5 99:11,18
 boards [2] 99:3 101:4
 bob [1] 5:7
 bodies [1] 101:4
 body [2] 12:18 69:19
 bold [1] 13:16
 bond [1] 5:1
 both [1] 17:7 19:21 25:15 26:11 34:16 54:5 59:7 77:11 86:13 109:7,11
 boundaries [1] 100:11
 boundary [1] 95:8
 bounded [1] 6:11
 brent [4] 106:5,6,10 107:15
 bridge [7] 26:6 28:6 64:12,13 79:14 83:21 85:12
 bridges [3] 77:1 80:12 81:13 82:16,19,19 83:3,15 84:4
 brief [2] 4:21 11:20
 briefed [1] 11:16
 bring [3] 86:9 103:12 105:21
 broken [9] 89:5,8,17 90:8,8,10,12,15,15
 brought [1] 10:14 13:3,7,8 32:8 43:1 45:8,21 73:5 75:16 84:12 87:22 89:19 90:22 101:22 102:2 103:8 113:9,17
 budget [1] 16:20
 building [3] 36:6 37:22 39:2
 built [1] 37:16
 business [4] 5:9 56:15 62:8 112:6

businesses [1] 32:19 40:3,9 54:1 55:21 56:2,16 57:11,12 62:4 84:3

C

calibrated [1] 69:18
 calibration [1] 18:16
 call [13] 4:7 15:13,15 27:11 43:14,18 75:3 76:11 77:8 78:2 80:17 92:22 105:17
 called [5] 16:2 43:10 75:6 78:17 94:2
 came [1] 56:14
 capacities [1] 16:19
 capacity [2] 94:16 106:11
 capitol [2] 2:2 5:9
 car [1] 20:5
 care [1] 82:12
 carlson [2] 5:4 116:5
 carry [1] 82:7
 cars [2] 65:15 90:12
 case [12] 8:20 9:13 12:1,7 14:13 24:6 40:1 43:9 44:9 92:22 96:8 116:22
 cemcom [1] 106:7
 center [9] 22:8 60:8,9,10 70:1,4,6,13 71:4
 certain [3] 61:4,13 63:16
 certainly [4] 7:3 76:4 114:22 116:14
 challenges [1] 111:12
 chance [2] 51:12 105:10
 change [6] 32:9 48:9 49:15 50:4,9 108:22
 changed [1] 50:12
 changes [3] 54:11,12,16
 characterize [3] 61:22 62:12 100:15
 charge [1] 87:14
 check [1] 58:16
 chemist [1] 16:20
 cherry [1] 21:15,17,19 22:10,14,15 24:18,22 25:2 70:5,6,18,19,20 71:5,5
 chicago [7] 1:19 4:20 80:18,21 81:4,16 82:11
 child [1] 112:19
 children [3] 111:1,11 112:7
 church [3] 21:12,20 62:2
 city [9] 1:10 4:14 5:15 6:14,15,21 7:4 9:11,14 10:11 11:1,4,7 15:4,6,7,9,10 23:10 33:15,21 34:9 36:20 42:2,14,22 43:8,21 44:6 45:22 47:7 48:13,14 51:20 58:18 59:3 76:21 77:15,16 80:21 81:16 82:11 85:1 94:15,18 95:7,7,13 96:2,5,15,19 97:5,20,21 98:3,12 99:4,19,21 100:1,6,9 101:2,11 102:22 103:8,18,19 104:19 105:1,2,6,13 107:17 108:8,16 111:6,19,20 112:5 113:9,17 114:11,11 115:13,19 116:19 117:6,14
 city's [7] 40:18 47:16 103:5 105:16 108:18 113:11 115:5
 claim [1] 10:2
 claims [1] 16:20

clear [5] 10:19 11:22 58:17 70:12 71:21
 clearance [2] 27:15,21
 clearly [4] 7:19 13:16 86:17 105:8
 client [3] 112:11 116:5 117:9
 clock-wise [1] 20:7
 close [17] 8:17 11:15,18 12:1,4,14 34:18 65:17 66:15 67:3,10,21 68:10,14 88:15,17 92:7
 closed [19] 17:18 18:15 32:14 34:19 40:4,8 52:10,18 53:4,10 54:2 55:20 57:13 66:21 69:6 71:17 73:11,17 74:5
 closing [9] 9:6 66:9 71:3,13 73:22 89:18,18 90:16 92:10
 closure [4] 4:11 13:13 17:17 32:10 53:12 73:5,7,9
 code [2] 13:22 74:17
 codes [1] 31:9
 collar [1] 82:11
 colored [1] 102:19
 colter's [1] 107:4
 combined [2] 99:14 103:14
 come [15] 9:17 11:10 13:1 14:19 32:21 39:6 53:19 56:6 57:6 64:2,9,9 83:16 116:8,21
 comes [1] 105:13
 coming [3] 66:4 105:10 115:10
 comment [1] 112:9
 comments [1] 114:21
 commerce [6] 1:8 4:6,11 6:1 13:3 19:8
 commercial [9] 34:16 35:2 40:22 63:6 64:10 73:14 97:17,18 112:2
 commission [10] 1:8 4:6,11 5:9 6:1 13:4 19:8 73:6,11,15 74:3 99:8,12,22 102:4,4
 commissioner [2] 5:4 8:2
 committee [2] 99:20,20
 commonly [2] 35:6,7
 community [2] 44:6 94:17
 companies [1] 26:10
 company [10] 4:8,19 24:15 25:13 34:13 37:9,15 38:3,22 39:9
 compared [1] 92:9
 comparing [1] 49:5
 complete [4] 23:18 70:8 71:6 109:4
 compliance [1] 14:21
 complies [1] 105:16
 component [2] 97:18 109:4
 comprehensive [1] 105:1,2,6,18
 concept [2] 48:4 103:5
 conceptual [12] 42:1 47:6,15 48:14 49:4,6 60:1 76:10 101:5 102:16,20,21
 concern [1] 68:6
 concerned [1] 82:7
 concerning [3] 44:17 47:1 101:12
 concerns [2] 53:22 68:9
 conclusion [1] 66:20
 concrete [1] 86:12

concur [1] 106:13
 conditions [1] 74:4
 condominiums [2] 32:19 112:5
 condos [2] 30:16 96:14
 conducted [2] 101:15 104:1
 configuration [2] 49:7,13
 configured [2] 33:5 87:6
 connect [6] 36:7,13,15,17 39:20 40:20
 connecting [1] 37:2
 connects [1] 41:7
 consider [1] 33:8
 consideration [1] 108:19
 consisting [1] 110:17
 consists [2] 44:9 97:8
 constructed [9] 34:22 39:15 40:12 41:11,15,19 51:19 54:3,7
 construction [9] 21:13 37:5 42:7 47:6,22 53:6 54:17 61:10 72:4
 consultant [2] 110:14,16
 contacted [1] 33:16
 contained [1] 107:16
 continue [2] 12:15 72:18
 continued [4] 102:9 117:1 118:4,7
 continues [1] 24:13
 contrary [2] 7:19 13:16
 control [4] 44:14 46:4 111:8 112:5
 convenience [1] 73:18
 conversation [3] 33:19 34:3 44:11
 conversations [1] 51:16
 conveying [1] 112:10
 cooperation [1] 77:12
 copies [1] 75:22
 copy [4] 96:22 102:2,18,19
 corner [1] 97:14
 corners [1] 97:11
 corporate [2] 95:8,13
 correct [7] 17:5 21:7,8 23:2,19 25:12 26:7,8 27:4,5,8,9,12 28:10 35:11 37:13 50:2 52:5,14 55:22 56:18,19 61:16 62:16,21 63:3 64:12,14 65:3,4 67:13 70:21 71:1 75:14,15,18 76:1,2 77:4,10,14,18 80:5,8 84:14,15 85:10,11,13,14 86:1,2 87:12,13,17,18 91:3 93:4 96:4 98:21 99:5,6,15 100:3,4,7,8,12,16 101:9,10 102:13 103:9,20 106:18 107:11 109:5 116:12
 correctly [1] 36:10
 corridor [2] 76:11,21
 costs [1] 117:10
 cougars [2] 22:9 24:20
 coulter [5] 106:5,6,10 107:12,19
 coulter's [2] 107:3,15
 council [4] 99:19,21 100:1 105:13
 counsel [1] 73:5
 count [2] 69:1 106:12
 counter [1] 116:8
 counties [1] 82:11

country [1] 82:7 county [1] 1:11 4:15 22:8,9,11 24:19 49:3 54:20 76:20,21 77: 12 84:22 85:2 87:1,2 95:18 101: 15 couple [4] 23:22 29:20 61:18 65: 9 couples [2] 110:22 112:7 court [8] 8:20 10:20 13:9 19:7, 15,20 24:2 115:10 create [5] 80:18 81:13,15 82:10, 13 criteria [18] 50:20 51:6,7,13 63: 16 68:13,17,19,22 69:1,2,4 71:3, 13 73:12,22 74:2,16 critical [1] 108:18 cross [2] 3:2,2 cross-examination [3] 36:1 57:19 91:10 cross-examine [1] 43:20 crosses [2] 22:20 78:18 crossing [9] 1:9 4:12 6:9,13 9: 7,14 10:22 13:1,14 17:17,18 18: 15 20:5,17 21:6 22:3,22 23:21 32:14,20 40:4,8,10,15 52:10,17, 22 53:2,4,10,13 54:1,2 55:20 57:13 58:6 62:6 63:2 64:5,11 65:14,18,19,22 66:2,3,7,8,9,12, 20 67:3,10,15,22 68:7,11,14 69: 6,7,8,9,11 70:1,5,16,17 71:5,9, 17 73:11,17,18 74:5 79:18,18 80:4 82:8 83:17 84:4 88:7,12, 16,18,20,22 89:6,9,19 90:16 92: 1,7,11,14,20 94:21 crossings [7] 87:15,19 88:4 91: 13,18,20 92:5 csr [1] 2:22 curb [1] 37:15 current [1] 17:1,11 34:8 49:6, 12 51:5 60:10,16 64:11 104:8, 14 currently [10] 16:11 26:14 27:3 33:2,4 40:1,7 41:10,14 52:3,4 56:5 59:4 64:22 87:6 94:13 107: 1 111:21	depending [1] 108:22 depicted [3] 31:20 35:5 58:10 design [9] 45:19 48:2,7,8 59:5 60:13,15,17 101:21 designate [1] 42:20 designates [1] 105:3 designed [3] 38:10 39:6 51:14 desire [1] 88:17 desired [2] 7:2 26:10 detail [2] 78:6,7 detailed [1] 78:2 details [1] 59:4 determination [1] 69:17 determine [5] 8:9 38:19 93:3 116:6,11 determining [1] 63:17 develope [1] 112:12 developed [1] 34:15 developer [1] 44:9 45:20 94: 17 100:3 101:2 103:1,3 104:4, 20 106:17 108:13 developers [2] 103:2 112:11 developing [1] 110:15 development [26] 20:16 29:21 32:17 34:9 36:9,14 39:12 41:1, 22 44:6,11,16 52:11,13,16 94: 17 96:18 97:6,7,16 107:17 110: 13,22 111:8,10 113:15 device [1] 18:16 dick [7] 3:5 5:14 10:10 44:4,5 93:21 94:10 dickson [7] 1:21 4:22,22 5:1 7: 7 9:19,21 13:10 14:14,20 28:14 29:2,12 33:20 35:21,22 36:3 38: 12 43:3,17 44:18 45:2 46:20 47: 9,12,15,20 48:20 57:15 65:9,12 72:3,18,19 81:17 82:17 83:5,8, 19,21 84:3 86:5 87:21 89:7,16 90:1,3 91:9,12 92:21 93:7 98: 13 100:20 104:6 105:7,12 106: 13 107:14 109:22 110:1 114:5, 15 115:6 116:1,2 117:4,5,12,15 118:2 dictate [1] 20:1 difference [1] 6:19 different [2] 49:12 101:4 difficult [2] 111:3,5 difficulty [1] 50:20 direct [7] 3:2,2 16:5 75:9 90:1,4 94:5 direction [4] 20:8 26:12 55:15 66:5 directly [1] 69:8 director [1] 44:5 dirt [1] 24:10 disagree [1] 72:7 discover [1] 11:3 discovered [1] 32:12 discuss [1] 44:1 discussed [3] 40:13 41:13 73:6 discussion [5] 50:16 56:11 86: 21 113:10 116:19 discussions [3] 98:2,6,8 distance [14] 18:14 22:12,22 68: 21 69:4,5,10,14,15 71:4,6,14,16 95:17	distances [4] 18:13 70:8 71:11 72:10 district [2] 111:7,13 division [2] 5:8 101:16 docket [1] 4:7 document [1] 44:8 47:21 48: 13 76:17 77:20 78:4,9,11 102: 19 103:14 106:1 documentation [4] 9:1 11:15 34:5 105:21 documents [14] 24:6 45:5 46:1, 2,6,7,14,17 84:12 101:22 103: 13 113:13,16,16 doing [1] 76:20 donahue [3] 110:14,20 112:10 done [2] 18:6 51:17 dot [1] 4:12 double-main [1] 70:2 down [12] 19:21 20:13 22:15,17 23:22 24:3 25:1,4 39:2 76:14 81:2 112:1 drafted [1] 85:16 drawing [4] 32:2 38:17,19 60:5 drive [4] 4:19 5:2 90:13,19 driveway [1] 27:7 driving [3] 20:19 27:19 90:17 drove [1] 18:4 duly [3] 16:3 75:7 94:3 dupage [3] 76:20 77:11 84:22 during [2] 32:6 33:18 duties [1] 17:11	ending [1] 9:7 ends [1] 39:8 engendered [1] 52:13 engineer [5] 16:21 34:12 48:1 57:2 106:7 engineering [10] 16:15 17:2,3 34:21 45:10 47:7 76:19 84:16 87:15 103:13 engineers [3] 54:20,20 89:6 enough [2] 14:11 72:16 enter [2] 29:3 56:4 entered [2] 113:12,20 entire [2] 6:14 105:2 entities [1] 48:6 entity [2] 99:13 110:15 entrance [1] 31:19 especially [1] 9:10 essentially [1] 78:4 establishment [3] 33:8 63:11 97:6 even [3] 41:17 83:18 101:4 event [1] 109:3 events [3] 22:8 25:3 54:5 eventually [1] 31:11 everything [1] 20:2 evidence [38] 3:8 6:4 7:20 8:1,3, 5,8,10,19,21 10:2,2,7 11:5,10, 16,17 13:17 20:3 29:3,5,9,11 68:18 71:21 73:16 76:4 89:8 109:19 113:12,20 115:8,10,11, 14,17,21 116:9 evidenced [1] 32:7 evidences [1] 86:9 exactly [2] 39:5,7 examination [5] 16:5 59:17 75: 9 94:5 110:5 examined [5] 16:3 46:9,10 75:7 94:3 examiner [1] 3:2 examines [1] 107:4 excuse [7] 12:9 25:17 32:14 67: 6 96:2 97:10 107:6 exhibit [20] 4:2 30:6 47:10,17 76:10 77:17,21,22 78:1,3,11,12, 13 85:22 113:7,8,11 115:13,16, 20 exhibits [4] 76:9 113:5 115:5,12 existed [2] 13:6,6 existence [1] 83:17 existing [1] 39:4 exit [4] 28:20 56:4,16,17 exits [1] 25:3 expect [1] 63:5 experience [2] 16:16 108:15 expert [2] 106:12 107:19 extend [4] 28:11 29:16 76:12 103:12 extended [2] 37:1 112:1 extending [2] 76:11 77:6 extends [4] 77:5 95:15,16 97:12 extension [3] 36:8,21 37:11 extent [3] 61:14 76:3 111:10
D			
d-1 [1] 41:5 d-i-c-k [1] 94:12 d-i-c-k-s-o-n [2] 4:22 5:1 daily [4] 30:8 33:14 63:7 96:10 data [1] 55:5 date [5] 4:4 47:19 115:18,22 116:21 day [3] 30:9 66:15,18 dead-ends [4] 24:15 37:14 38:1, 21 december [3] 29:20 30:10 33: 14 decide [1] 115:3 dedicated [2] 26:21 27:2 deemed [1] 51:1 deems [1] 74:3 definitely [2] 9:5 13:2 delivery [1] 117:9 department [9] 1:6 4:9 17:3 34: 21 49:2 50:21 59:12 61:2 77:13			
E			
each [1] 68:18 earlier [3] 15:8 102:20 103:14 early [1] 98:9 east [50] 2:2 5:2,9 20:9 22:19 25: 15 26:11 32:4 35:8 47:6 49:16, 18,19 51:2 54:13 55:7 56:18 58: 2,9 59:8,22 60:2,2 63:13,15 76: 11,12 77:4,6 79:2,4,17 80:7 82: 18,21 83:22 84:5 85:19 95:18 97:12 98:5 100:10 106:22 107: 5,8,10 109:8,11 111:9,14 east/west [3] 40:21 41:5,6 eastbound [3] 23:14,15,15 easterly [1] 58:7 eastern [3] 104:22 111:20 115:1 eastward [1] 25:1 easy [1] 88:21 effect [1] 56:14 egress [4] 28:21 40:5 54:4 87: 11 either [5] 13:8 39:1 66:5 98:2 112:14 elementary [4] 111:14,15,16,17 elements [1] 108:18 elm [2] 57:4 107:7 elsewhere [1] 108:1 employed [3] 16:11,18 94:14 employee [1] 56:15 employees [1] 57:12 empty [1] 112:14 encompass [2] 95:14 97:12 encompasses [1] 97:15 end [5] 16:21 25:9 39:8 116:22 117:12			
F			
fabian [1] 112:1 faces [1] 111:13 facilities [3] 25:7 54:4 62:16			country - facilities

<p>facility [10] 25:7 28:5 38:2,2,7, 14,15,16 64:20 111:12</p> <p>facing [1] 20:9</p> <p>fact [13] 5:14 6:15 7:10 9:10,11 12:6 50:1 65:15 72:2 93:3 96: 14 109:19 116:7</p> <p>factor [1] 67:14</p> <p>facts [12] 7:14 9:16 12:19,22 13: 14,19 14:4,8,11,11,18 43:9</p> <p>failure [1] 13:12</p> <p>fair [2] 37:18 41:21</p> <p>fairly [1] 88:21</p> <p>familiar [10] 35:13 53:1 54:15 56:22 65:20 68:13 74:16 94:21 96:11,20</p> <p>familiarity [1] 68:16</p> <p>family [1] 112:16</p> <p>far [6] 46:17 79:5 82:21 89:3 100:10 103:11</p> <p>fashion [1] 42:20</p> <p>fatality [1] 92:19</p> <p>february [2] 102:10 117:13</p> <p>federal [2] 67:4 82:15</p> <p>federally [1] 81:15</p> <p>feel [1] 21:1</p> <p>feet [10] 20:4,5,13 23:16 60:7 76: 15 77:5 107:8,9,10</p> <p>field [2] 16:15 17:2</p> <p>file [2] 7:1 11:1</p> <p>filed [7] 11:15 14:5,6 24:6 97:19 103:19,20</p> <p>filing [1] 98:1</p> <p>filings [1] 12:19</p> <p>final [4] 48:2,8 60:14,17</p> <p>finally [1] 99:4</p> <p>find [1] 111:3</p> <p>finds [1] 73:15</p> <p>fine [2] 26:1 117:18</p> <p>finished [1] 83:11</p> <p>firm [3] 47:8 76:20 84:17</p> <p>first [13] 6:9 15:14 21:3,15 29:19 35:9 44:7 46:12 89:7 99:19 102: 11 104:6 114:2</p> <p>fit [1] 105:5</p> <p>fits [1] 105:8</p> <p>five [2] 94:20 110:17</p> <p>flanks [1] 97:10</p> <p>flows [1] 63:18</p> <p>focus [1] 44:22</p> <p>folks [1] 112:15</p> <p>follows [3] 16:4 75:8 94:4</p> <p>forces [1] 53:13</p> <p>form [5] 8:15,21 9:2 12:18 108:4</p> <p>formally [1] 96:18</p> <p>formed [1] 110:17</p> <p>forth [2] 73:12 74:2</p> <p>forward [3] 98:15,15 109:13</p> <p>found [1] 10:21</p> <p>frame [4] 51:21 52:1 108:12,16</p> <p>friday [1] 30:10</p> <p>front [1] 30:13</p> <p>frontage [1] 62:7</p> <p>fruition [2] 105:11,13</p> <p>function [1] 111:12</p> <p>funded [1] 81:16</p> <p>funding [6] 60:19,21,22 61:4,6</p>	<p>82:15</p> <p>further [15] 10:5 28:12 29:17 35: 19 49:17,19 51:2 57:15 58:9 73: 19 91:7 93:7,16 97:12 109:21</p> <p>future [4] 72:9 86:7,15 116:21</p> <p style="text-align: center;">G</p> <p>garage [1] 38:2</p> <p>garnered [1] 29:6</p> <p>gate [1] 91:6</p> <p>gates [11] 89:6,9,17 90:8,8,10, 12,15,15,18,19</p> <p>gateway [5] 35:8 47:7 98:5 104: 22 115:1</p> <p>gave [1] 57:2</p> <p>general [10] 16:16 20:10 21:1 24:4 32:6,22 65:13 70:8 113:13, 15</p> <p>generally [5] 35:1 53:10 62:12 63:19 64:3</p> <p>generate [1] 111:11</p> <p>geneva [8] 1:10 4:8,13,14,14 5: 3,15 6:14,15,20,21 7:4 8:1 9:11, 14 10:11 11:1,4,7 15:4,6,7,9,10 23:10 30:16 34:9 36:20 42:3,14 43:1,8,21 44:6,7 45:22 47:7 48: 13 76:11,21 77:15,16 78:17 82: 8 85:1 94:15 95:7,7,13 96:3,5, 13,16 97:5,20 98:3,5,12 100:6,9 101:11 102:22 103:18,19 104: 19,21 105:6 107:18 108:9 109: 20 111:6,7,7,9,15 113:9,17 115: 13,19 116:19 117:14</p> <p>geneva's [2] 35:8 48:14</p> <p>gentleman [2] 35:13 42:22</p> <p>geometry [1] 58:7</p> <p>gerald [1] 35:14</p> <p>given [6] 6:4 29:6 66:19 76:18 86:16,22 88:14 116:11</p> <p>giving [4] 20:10 21:1 46:6 109: 18</p> <p>goodness [1] 90:14</p> <p>got [1] 100:21</p> <p>governmental [2] 61:7 98:3</p> <p>grade [3] 1:9 4:12 18:4 20:11 22:18 23:21 24:14 53:7,8,11 55: 12,19 56:6 58:6 64:18 65:14,16 67:1,12,15 68:7,11,14 79:1,8,18 81:4 88:10,20,22 94:21</p> <p>granted [5] 6:2 10:4 14:16 108: 20 109:1</p> <p>granting [1] 7:9</p> <p>gravel [1] 24:10</p> <p>ground [1] 29:7</p> <p>group [3] 102:15,17 110:17</p> <p>growth [1] 111:21</p> <p>guess [3] 27:16,17 117:6</p> <p style="text-align: center;">H</p> <p>half-mile [1] 79:6</p> <p>half-way [1] 58:5</p> <p>hands [1] 5:18</p> <p>handy [1] 115:2</p> <p>happen [1] 80:12</p> <p>hard [1] 81:3</p> <p>head [3] 64:14 71:7,18</p> <p>headed [6] 20:22 22:6 23:12 55:</p>	<p>15 58:5 70:4</p> <p>heading [2] 70:14,16</p> <p>hear [5] 25:17,19,22 90:10 93: 12</p> <p>heard [4] 9:18 74:6,11 89:8</p> <p>hearing [26] 7:1,4 8:3 9:17 10:9, 15,20 11:18 12:1,14,18 17:9,22 29:10 53:16,20 75:17 89:4 93:2 94:22 95:10 96:11 102:7,9,12 118:5</p> <p>hearings [1] 102:3</p> <p>hearsay [1] 33:22</p> <p>height [1] 28:6</p> <p>herald [3] 30:8 33:14 96:10</p> <p>herein [3] 16:2 75:6 94:2</p> <p>higher [1] 117:10</p> <p>highway [6] 5:4 8:2 59:9 76:14 77:1 78:16</p> <p>highways [1] 64:2</p> <p>hired [2] 84:19 110:16</p> <p>history [9] 52:21 53:1,5 65:18, 21 89:3 92:13,18 116:12</p> <p>honor [47] 5:22 7:18 8:5,7 10:8, 14 11:13 15:8 19:5 23:2 29:12 35:19,22 44:5 45:11,18 46:10, 14,19 47:4,10 58:10 59:16 65:6 74:20,21 76:3 81:19 82:3,17 86: 17,18 88:1 89:22 90:18 91:3,7 93:1,17,20 109:21 110:2 113:4 114:3 116:2,18 117:19</p> <p>honor's [1] 115:6</p> <p>hope [2] 45:7 63:8</p> <p>horizontal [1] 31:8</p> <p>houses [1] 21:12</p> <p>housing [1] 112:12</p> <p>however [3] 6:20 9:4 74:3</p> <p>hurdles [2] 59:5 99:17</p> <p>hypothetical [2] 72:3,8</p> <p style="text-align: center;">I</p> <p>icc [4] 7:8,19 10:3 13:15</p> <p>idea [4] 46:8 51:17 83:10,11</p> <p>identification [4] 3:8 4:3 43:22 47:18</p> <p>idot [5] 59:4 63:14,17 101:16 108:20 109:2</p> <p>idot's [1] 54:20</p> <p>illinois [28] 1:6,6,8,11,19,22 4:6, 9,9,11,15,20 5:3,10 6:1 13:3,21 19:7 44:7 49:2 50:21 59:12 61: 2 67:22 73:14 74:17 77:13 80: 21</p> <p>impact [4] 55:1,7,16 57:11</p> <p>include [2] 17:7 34:10</p> <p>included [3] 29:21 113:21 114: 7</p> <p>includes [1] 32:18</p> <p>incorporated [3] 76:19 84:18, 20</p> <p>incorporating [1] 97:16</p> <p>incorrect [1] 15:1</p> <p>increase [1] 52:12</p> <p>increased [2] 32:21 33:1</p> <p>incurrence [1] 54:5</p> <p>independent [1] 104:20</p> <p>independently [2] 34:3 103:8</p> <p>indicate [3] 31:6 85:21 86:3</p>	<p>indicated [10] 15:8 25:8,14 26: 10 33:19 64:8 81:12 84:11 90:7 116:20</p> <p>indicates [3] 10:5,10 66:16</p> <p>indicating [6] 21:21 24:10,12 46:19 57:6 60:6</p> <p>individual [1] 71:17</p> <p>industrial [4] 20:16 34:16 97:17 112:3</p> <p>industries [2] 20:14 24:1</p> <p>industry [8] 16:17 24:2,5,9,13 25:11 26:7 28:16</p> <p>influence [1] 110:19</p> <p>inform [1] 69:19</p> <p>information [14] 9:9 10:7 12:2, 6,6,13,14,17,22 13:2,5 26:22 34: 4 63:9</p> <p>ingress [4] 28:21 40:5 54:4 87: 11</p> <p>ingress/egress [3] 40:9 55:20 86:8</p> <p>initial [3] 23:20 29:9 102:7</p> <p>initially [3] 33:16,19 50:15</p> <p>inspection [1] 32:6</p> <p>install [1] 50:13</p> <p>installation [4] 42:15 47:1 64:1, 2</p> <p>installed [1] 51:15</p> <p>instituted [1] 53:9</p> <p>instructed [1] 8:20</p> <p>intention [2] 43:17 112:11</p> <p>interaction [1] 65:15</p> <p>interest [7] 6:19,20,21 11:5 95: 8,12 112:10</p> <p>interested [1] 46:21</p> <p>interests [1] 35:2</p> <p>intermediate [1] 40:19</p> <p>interrupt [1] 44:18</p> <p>interruption [1] 8:12</p> <p>intersect [4] 28:13 29:18 31:11 37:16</p> <p>intersecting [1] 67:19</p> <p>intersection [44] 20:21 21:3,15, 17 22:1,4 23:4,17,20 24:21 26: 15 28:18 29:22 33:3,9 34:7 49: 13,17,19 50:18,22 54:11,17,22 55:1,8 58:8,21 60:13,20 61:5, 11,15 63:10 64:19,22 71:22 72: 15 76:13 87:5 95:16 97:11 101: 12,18</p> <p>intersections [3] 18:14 32:1 59: 6</p> <p>intersects [3] 21:22 50:5 107:1</p> <p>introduce [1] 29:5</p> <p>invited [1] 6:22</p> <p>involved [5] 17:14,14 67:16 79: 12 101:11</p> <p>involves [1] 97:10</p> <p>isn't [7] 40:8 41:21 42:11 67:2,9 68:3 104:9</p> <p>issue [3] 29:9 67:20 87:22</p> <p>issued [3] 7:19 8:11 10:3</p> <p>issues [4] 14:2 59:5 67:14,16</p> <p>itself [4] 9:14 22:18 33:17 54:15</p> <p style="text-align: center;">J</p> <p>january [3] 1:13 69:22 102:9</p>
--	--	--	--

job [1] 17:1
jog [2] 58:7 60:2
john [2] 5:4 47:12
jr [1] 1:18
judge [94] 1:16 4:5 5:6,11,13,16,
20 7:6,7 8:13 9:20 13:10 15:2,
13 19:13,16,20 22:3 23:1 25:19
29:1,2,11 34:1 35:21 38:9 43:3,
6,11,14 44:3 45:14 46:5,16 47:
11,14 57:16,17 59:15 65:7 72:
16,21 74:8,11,15,19,22 76:6 81:
6,9,18 82:2,5,12 83:9 84:8 86:4
87:3 88:2 89:14,17 90:9,14,19,
22 91:9 93:6,9,12,15,18 98:18
104:15 105:19 106:14 108:6,10
109:22 110:3,7 113:2 114:1,4,6,
9,13,18 115:2,12 116:1 117:3,
16,20 118:3
june [1] 1:16
jurisdiction [2] 59:11 96:5
justify [1] 73:19

K

kane [13] 4:15 22:8,9,11 24:19
49:3 54:20 76:20 77:11 85:1 87:
1,2 101:15
kane/dupage [1] 95:18
kautz [9] 77:1 79:9,10,13 111:22,
22
kdot [3] 101:15 108:20 109:1
keep [1] 115:2
keeping [1] 112:13
kirk [162] 4:12 6:10,17 13:13 15:
11 17:7,8 18:15 20:11,12,21,22
21:16,18,22 22:1,5,5,6,7,16,17,
22 23:1,5,17 24:22 25:4 26:5,
15 27:7,12 29:22 30:22,22 31:
14,16 32:3,6,10,13 33:3,9 34:6,
11,17,18 35:1,3 36:7,8,13,13,15,
16,22 40:14,21 41:7,7 42:15 47:
2 48:12,21 49:7,13,20 50:4,11,
13,18 51:4,15 52:3,6,21 53:7
54:11,18,22 55:2,10,11,12,14,
16 56:6,10 57:8 58:1,3,4,8,21
59:21 60:3,10,13 61:15 63:2,10
64:6,11 65:1 67:12,17 70:6,22
71:8,10 72:1,15 76:13,13,16 77:
4,6 78:21,22 79:2,4,19 80:4,7
82:21 83:17,22 85:4,5,6,16,17,
18 86:8,14,15 87:5 88:16 95:1,
16,20 97:11,14 100:19 101:13
106:20,22 107:6,7,10,22 108:2,
4 109:8,9,10,10,12,15,15,17
111:22
knowing [1] 39:5
knowledge [12] 10:21 11:7 26:
20 33:7 37:5 51:22 53:15 54:16
61:6 62:5 69:14 91:15

L

labeled [1] 102:16
laid [2] 57:9 74:16
land [12] 6:16,16 20:10 37:7 42:
6 50:3,8 97:13 105:3,4 110:13
111:21
lands [1] 111:8
lane [15] 21:15,17,19 22:10,14,

15 24:18,22 25:2 55:9 70:5,6,
19 71:5,5
lannard [1] 102:16
large [1] 111:17
larger [2] 27:21 102:18
last [11] 10:9,20 12:1 16:19 18:2,
7,12 24:17 29:6 66:13 93:20
late [1] 98:9
later [1] 115:3
latest [9] 78:15 79:10 80:15
law [3] 1:16 73:15 90:21
laws [1] 104:14
lay [1] 20:10
lead [2] 30:13 32:3
leads [1] 66:19
learned [1] 6:8
least [2] 11:9 43:22
leave [1] 114:6
led [1] 11:17
left [9] 7:9 21:21 26:14 56:5,9
65:2 71:22 72:14 87:7
left-hand [1] 33:3
legal [1] 72:12
lengths [1] 18:13
less [3] 71:14 83:1 112:8
lettering [1] 13:16
level [3] 98:6 99:20 101:14
liberty [1] 5:2
life [1] 112:22
lifestyle [1] 112:13
light [12] 9:10,17 13:1,14 14:19
22:12 24:19 33:9 47:2 63:12 72:
6 112:3
lights [1] 20:20
limited [3] 56:17 71:19 106:8
limiting [1] 56:12
limits [2] 76:12 95:13
line [9] 37:21 60:8,10 70:2,13 71:
4 95:18 100:20
lines [1] 6:12
linneman [2] 35:14 91:5
literally [1] 13:7
little [7] 21:4 23:21 62:7 63:15
78:6,7 94:20
located [2] 15:11 97:13
location [9] 6:13 17:7 31:3 54:
13 63:12 85:19
long [4] 19:1 53:7 94:19 117:3
long-standing [1] 111:6
look [4] 42:21 45:19 46:18 91:3
looked [9] 24:3 44:22 45:4 46:1
61:19,20
looking [9] 22:16,19 24:20 25:1
31:18 41:2 47:21 49:4 63:17
looks [2] 19:11 79:11
loop [2] 23:18 39:3
lose [1] 54:3
lot [1] 25:2
lots [1] 104:12
louder [2] 20:15 48:17
lying [1] 84:4
lynn [1] 57:4

M

ma'am [4] 39:22 41:12,16 50:10
mack [2] 1:18 4:17
made [9] 9:3 12:20 18:19 19:6

23:18 28:18 33:21 103:2 112:9
maintain [2] 26:10 34:17
maintains [1] 95:7
major [2] 77:8 83:3
manager [3] 16:15,20 17:2
manifest [2] 7:20 13:17
many [2] 87:19 91:13
map [3] 30:17,19 31:7
march [4] 117:13,16 118:4,7
marked [10] 4:3 9:18 30:6 43:22
47:9,18 75:17 78:10 113:6,8
market [2] 112:15,18
married [1] 30:1
mary [2] 1:21 4:22
matter [14] 6:5,15 9:6 11:6,16
13:18 35:10 75:14 78:21 94:22
99:22 108:17 118:3,6
mcdonough [3] 76:18 84:18,19
mean [5] 14:17 54:6 69:3 71:10
109:15
means [3] 36:8 48:1 65:14
meant [1] 74:10
meet [9] 51:5,12 68:18 74:4 98:
11 104:8
meeting [2] 6:22 52:3
meetings [1] 101:15
meets [7] 68:20,21,22 69:2,3 73:
12 104:9
member [1] 34:20
mentioned [4] 57:22 91:5 114:
1,13
met [3] 1:14 30:1 68:14
metra [3] 87:16 88:5 91:14
michael [1] 110:14
might [9] 29:2 46:21 56:8 81:19
84:5
mile [5] 21:20 79:6,7 82:22 83:1
milepost [1] 4:13
miles [4] 69:16 70:9,10 71:15
minute [1] 45:14
minutes [1] 19:2
mischaracterization [1] 12:8
miss [7] 35:21 38:11 72:18 91:9
109:22 116:1 117:4
mixed [1] 97:15
mm-hmm [1] 78:8
modification [4] 17:17 28:18
61:14 100:19
modifications [4] 54:14 80:6,7
86:19
moment [2] 44:19 45:11
month [1] 29:6
months [2] 112:8 113:1
morning [4] 5:5 10:9 37:4 116:5
most [3] 34:8 60:16 79:11 92:2,
2 112:21
motion [2] 6:2 8:15
motorist [1] 33:2
move [5] 51:2 58:8 81:3 109:12
112:19
movement [3] 56:21 85:18 86:
10
movements [1] 80:22
ms [62] 1:16,21 4:22 7:7 9:19,21
13:10 14:14,20 28:14 29:2,12
33:20 35:22 36:3 38:12 43:3,17

44:18 46:20 47:9,12,15,20 48:
20 57:15 65:9,12 72:3,19 81:17
82:17 83:5,8,19,21 84:3 86:5
87:21 89:7,16 90:1,3 91:12 92:
21 93:7 98:13 100:20 104:6
105:7,12 106:13 107:14 110:1
114:5,15 115:6 116:2 117:5,12,
15 118:2
much [4] 19:10 60:2 74:22 111:
20
must [3] 14:1,5 86:5

N

name [6] 4:17 5:14 16:8 35:14
84:17 94:8
named [1] 57:5
narrate [2] 19:7,18
nationally [1] 81:1
nature [8] 17:15 27:6 61:20 84:
13 85:9 101:6 108:22 113:18
necessary [9] 49:1 50:9 51:12
68:18 84:1 109:4
need [7] 47:12,14 48:6,7 87:11
116:7,14
needed [1] 71:11
needs [1] 48:4
neither [1] 10:13
nesters [1] 112:14
never [5] 40:12 42:11 52:20 89:
19 90:22
new [32] 7:14,22 8:3 10:1,2,21
11:10 13:18 14:4,8,8,10 21:13
29:5,11 36:8,13 49:20 54:18,22
60:11 67:12 70:22 97:11 107:6
109:9,10,12,15 111:10 115:7,9
newspaper [15] 7:3 29:19 30:2,
3,7,11 33:13 34:15 35:6 39:10
40:13 110:8 113:7 114:9,10
next [2] 20:19 77:20
nine [2] 112:8,22
nor [2] 10:15 113:15
north [24] 4:19 6:16 20:19 22:6
23:20 24:20 28:12 29:17 30:19
31:12 34:14 40:9,20 54:1 55:21
57:7 58:5 70:14 71:7,9,10,17
84:4 87:10
northeast [1] 80:21
northerly [1] 55:15
northwest [1] 20:17
nos [1] 4:2
nothing [2] 59:1 81:18
notice [3] 1:14 7:3 102:2
noticed [1] 28:3
notify [2] 116:15,15
number [2] 3:8 101:3
numeric [1] 31:9
numerous [1] 89:5

O

o'clock [2] 118:2,3
oath [1] 75:13
object [3] 8:1 14:20 89:16
objected [1] 86:6
objection [25] 10:19 15:3 28:14
29:3 33:20 44:2 71:20 81:17 82:
17 83:5,19 86:5 87:21 89:7 93:
5 98:13 100:20 104:6 105:7,19

107:14 115:4,9 116:17 117:11
 objections [1] 9:2
 observe [1] 28:1
 obviously [3] 29:5 38:6 104:15
 occur [4] 41:1 52:16 57:4 72:9
 occurred [1] 52:11
 october [1] 97:22
 offer [1] 114:3
 offered [1] 20:2
 offering [1] 114:4
 office [2] 97:17 112:3
 officials [2] 98:3 116:19
 offset [1] 116:8
 okay [1] 38:20 41:2 48:10 61:
 10 71:7 74:18 81:12 84:11 85:6
 92:9 100:2 102:11 103:7,17
 104:3 114:18 117:22
 old [9] 4:12 6:10,17 13:13 15:
 11 17:8 18:15 20:11,22 21:21
 22:6,17,22 23:17 25:4 26:15 27:
 7 30:22 31:16 32:3,6,10,13 33:
 3,9 34:6,11,17,18 35:3 36:13
 40:14 41:7 42:15 47:2 48:12,21
 49:7,13 50:4,11,13,17 51:4 52:
 3,6,21 55:2,11,16 56:6,10 58:1,
 3,4,8,21 59:7,21 60:3,10 63:2,
 10 64:6,11 65:1 67:17 72:1,15
 76:12 78:21 79:2,4,19 80:4,7
 82:21 83:17,22 85:16,17,18 86:
 8 87:5 88:16 95:1,16,19 97:14
 100:19 106:20,21 107:7,10,22
 on-site [1] 18:5
 one [3] 25:7 26:9 30:4 32:3 44:
 19 45:5 46:8,19,22 47:14 56:15
 57:5,18 58:1,16 63:4 67:19 69:
 7,10,11 73:1 74:4 76:5 79:11
 81:4 90:15 93:20 103:12 106:1
 108:17,19 111:15 113:9 114:11
 only [1] 9:12 12:8 28:8 40:8,15
 46:22 47:14 55:20 56:4,13 58:
 13 62:10 67:2,9 68:6 71:19 82:
 8 112:22
 opening [4] 4:21 5:20 7:5 8:14
 opinion [1] 34:12,20 50:7,8 52:
 9,17 53:3 67:11 68:17 71:2 104:
 8
 opportunity [7] 17:21 66:4 92:
 21 93:1 95:3 116:3,10
 opposed [1] 88:12
 opposition [1] 50:19
 optimistic [1] 68:1
 options [1] 44:16
 order [1] 4:10 7:8,18,18 8:10
 10:3 13:13 25:15 50:22 51:14
 73:11 74:5
 ordinance [1] 102:8
 original [2] 8:18 9:17
 other [3] 16:22 20:18 22:16 28:
 19 34:4 39:10,18 42:21 57:5 58:
 16 65:7,13,15 68:11 69:7,12 72:
 19,21 85:12 86:21 88:4 91:18
 98:2 101:22 102:14 103:10,15
 105:21 106:1 107:12 113:16
 114:20 116:6
 otherwise [1] 78:17
 out [1] 46:7 54:4 56:9,10,13 57:

9 71:19 74:16 82:7 95:15 112:
 19 113:1
 outfit [2] 24:11 25:10
 over [1] 10:19,19 18:4 22:8,19
 32:20 56:6 63:2 77:1 78:19 82:
 7 83:4 94:20 96:6
 over-a-billion-dollar [1] 81:22
 overall [2] 77:3,8
 overcome [1] 59:4
 overhead [2] 58:12 76:22
 overpass [6] 23:1 27:12 35:1
 58:3 88:8,11
 overrule [1] 15:3
 overruled [1] 29:1
 own [1] 110:18
 owners [2] 110:18,21
 ownership [1] 110:16

P

pacific [1] 4:7,19 16:12,13 17:4
 22:21 34:13,21 67:7,9 78:19 79:
 22 82:6 83:4 87:17 88:18 92:6
 95:14
 pacific's [1] 34:14
 page [3] 7:14 13:11 30:14
 pan [1] 20:7
 panning [1] 24:21
 parallels [1] 62:7
 parcel [1] 105:4
 parcels [1] 105:3
 parked [1] 28:4
 parkway [1] 112:1
 part [2] 6:5 30:11 38:3 44:11
 45:21 77:3,12 81:13 85:7 89:15
 98:16 100:5,18 103:15 106:16,
 19,21 107:16 110:14,15
 participated [1] 101:14
 particular [7] 9:7 15:5 35:10 54:
 14 60:20 88:16 108:12
 particularly [1] 111:13
 particulars [1] 48:5
 parties [1] 79:12
 party [3] 9:12,12,13
 pass [1] 36:16
 passes [1] 108:9
 past [2] 21:19 50:20
 pattern [2] 32:20 68:21
 pay [1] 117:9
 pending [2] 11:6,8
 people [5] 45:15 53:13 90:17,19
 112:18
 percentage [1] 61:4
 perfect [1] 70:7
 perhaps [2] 49:3 117:13
 period [2] 116:13 117:3
 permitted [1] 11:20
 person [2] 42:21 56:15
 perspective [2] 8:16 20:18
 petition [5] 4:10 6:10 7:11 9:22
 11:1
 petitioner [1] 89:20
 petitioner's [1] 3:9,12,15 4:1
 30:6 77:17,22 78:1,12,13 85:22
 113:6,8,10 115:12,15
 phase [1] 101:21
 phone [1] 8:12
 phonetic [2] 102:17 106:8

pick [1] 46:7
 pickup [1] 27:20
 place [2] 102:6,9
 placed [1] 12:3
 plan [5] 33:17 38:4,13 39:20 41:
 9 45:1 47:6,15 48:15 49:4,6 50:
 13 56:14 58:11 60:1 72:4 76:10
 80:18 83:12 85:15 86:18 96:13,
 14 97:3,7,15 98:11,15 99:2,7,12,
 22 100:15,18,21 101:1,9,17 102:
 3,4,15,16,20,21 103:5 105:1,2,6,
 9,17,18 108:3,21,22 109:4,6,12
 110:9,10
 planned [6] 39:15 47:1 80:6 87:
 1 97:6,7 111:20 112:2
 planner [2] 33:15,21
 planning [7] 16:21 58:19 59:2
 80:11 81:7 83:9 101:12
 plans [4] 28:11,19 29:16 36:19
 40:18 42:13,16,20 43:4,7,19,21
 44:1,3 46:9,11,12 47:4 54:8,19
 56:8 58:1 60:13,15,16,17,19,21,
 22 78:15,16 80:15 83:16 96:15
 101:18 102:14 103:10,17,22
 104:2,19,20
 plant [1] 58:3
 play [1] 22:9
 played [1] 19:14
 please [1] 4:16 15:16 16:9 29:
 15 36:11 40:6 48:17 53:17 67:8
 94:9
 point [2] 108:17 113:4
 pointing [1] 41:2
 policy [3] 53:8 111:6,19
 ponder [1] 7:9
 portion [4] 38:22 73:7 95:22 96:
 6
 position [6] 14:12 16:13 32:9,
 13 35:16 94:19
 possibility [2] 80:11 107:21
 possible [2] 36:12 37:6
 post-hearing [2] 13:22 14:21
 potential [1] 36:6 72:5 100:6
 107:6,7 108:14
 predicated [2] 7:17,22
 prefer [2] 88:9,10
 preferable [1] 117:21
 preliminarily [1] 85:16
 preliminary [1] 47:5,22 60:1
 78:15 81:10 83:9 84:13 85:7,9
 86:19,20 97:7 100:15,22 101:1,
 9,17
 preparation [1] 42:7
 prepared [9] 84:13,16 102:16,
 22 103:1,3,18 104:19 106:4
 preschool [1] 21:12
 presence [2] 37:9,21
 present [1] 5:5 7:22 41:21 43:6,
 9 79:17 85:19 86:11 89:5 116:6
 presented [1] 13:18 14:9 17:
 15 33:17 42:4 44:8 66:14 73:16
 80:7 116:4
 preserve [1] 25:8
 previous [6] 10:15 21:11 53:19
 66:14 89:4 92:15,17 115:7
 previously [1] 5:12 8:8,11 16:

3 53:16 57:2 62:18 75:7,13 94:
 3 115:11
 primarily [2] 17:13 21:10
 primary [2] 53:9 67:14
 print [2] 113:9 114:11
 prints [7] 19:10 45:19 75:16,20,
 21 76:1,8
 prior [5] 7:18,18 18:19 98:1 116:
 10
 private [1] 27:3
 probably [3] 76:15 82:6 83:10
 problem [1] 28:16
 procedure [2] 13:22 14:22
 proceed [3] 19:13 69:11 88:2
 proceeding [7] 8:9,18 9:8 11:6,
 11 89:11 91:1
 proceedings [2] 11:8 101:7
 process [1] 59:3
 produce [2] 8:19 12:5
 produced [1] 9:9
 product [1] 112:12
 professionals [1] 112:14
 progress [1] 15:3
 project [1] 17:19 58:18 77:3 81:
 13,15,16,22 82:5,10,13 84:22
 85:3,4,6,7 110:13
 project's [1] 110:13
 projector [1] 58:12
 projects [1] 17:13
 prompted [1] 68:10
 proper [5] 8:6 9:12,12,13 11:10
 property [1] 8:6
 property [4] 39:4 97:5 100:10
 110:18
 proposal [2] 34:6,8 38:6 39:11,
 18 40:18 41:22 42:1,10,12 44:
 14 48:3,5,11 49:22 80:15 86:11
 100:2,14 103:7 105:5,9 108:13,
 19
 proposals [4] 29:21 33:8 108:3
 113:19
 propose [1] 55:9
 proposed [3] 30:16 32:18 34:
 15 38:4,5,13 39:12 42:8 44:10,
 15 46:4 48:10 50:17 51:18 54:
 10,12,14 55:18 60:3 72:4 78:16
 81:4 83:16 86:10 96:14 97:16
 98:11 104:3 107:3,13,15,17
 proposition [1] 65:13
 provide [9] 9:1 14:1 37:4 40:21
 87:9
 provided [1] 42:13
 provisions [1] 73:13
 proximity [2] 53:6 67:1
 public [1] 1:9 4:12 16:21 17:15,
 16,18 32:22 34:12 72:13 73:16,
 18 84:1 98:16 102:3 108:6
 purposes [7] 7:13 15:2 43:4
 111:9 117:1,6
 pursuant [2] 1:14 13:21
 purview [1] 10:22
 put [8] 8:18 11:19 12:12,13 13:
 16 37:15 58:20 108:3 117:16

Q

quadrant [2] 20:17 112:2
 qualify [2] 104:4,13

qualifying [1] 104:12
 qualities [1] 112:6
 question [18] 15:4 26:2 29:14,
 15 58:14 60:12 63:21 66:10 67:
 8 73:19 74:8,10,11 81:6,9,20
 104:11,17
 questioning [1] 100:21
 questions [14] 35:20 57:15 65:
 5,7 72:20,21 88:14 91:7 93:10,
 13,16 109:21 110:1,4

R

railroad [39] 4:8,19 5:8 6:11,12
 8:16 9:4 13:8 16:12,14,17,18
 17:4,14 22:21 30:20 34:13,22
 40:4 64:19 66:8 67:4,7,10 77:6
 80:1 83:4 87:17 88:8,15 95:14
 100:12 114:22
 railroad's [1] 15:10 61:21 87:10
 96:1
 railroads [1] 77:2
 railway [3] 11:3 52:22 53:3
 raise [1] 5:18
 rather [6] 7:16 8:4 9:7 10:17 44:
 20 69:8
 read [3] 53:18 73:9,21
 reading [1] 39:10
 realignment [1] 59:22
 reality [1] 42:11
 really [1] 62:9
 realty [3] 97:8,9 110:18
 reason [6] 12:8,10 63:14,22 67:
 2,9
 reasons [6] 63:19 64:3,6 88:17
 89:18 90:16
 recall [3] 46:8,17 92:19
 receipt [1] 7:8
 receive [1] 99:21
 received [2] 26:22 54:19
 recently [1] 37:3
 recognized [1] 86:18
 recollection [2] 8:17 49:5
 recommend [1] 34:19
 recommendation [2] 34:17 99:
 21
 reconfiguration [2] 51:18 106:
 20
 reconstruct [1] 54:8
 reconstruction [2] 54:22 55:7
 record [24] 6:3,5,6 9:8,15 10:1,6
 12:3,4 14:12,18 16:8 18:7,11,
 17 45:9,17 64:22 89:1,15 94:8
 106:9 109:14 115:9
 recording [3] 18:18,20,21
 records [2] 45:21 95:6
 recross-examination [2] 65:
 10 73:2
 redirect [3] 59:15,17 89:22
 redo [1] 26:2
 redrawn [1] 104:12
 reduced [1] 102:18
 redundancy [1] 88:19
 redundant [2] 66:22 67:11 83:
 18
 reed [23] 21:3 23:19 25:10 26:5,
 19 27:11 28:9,11 29:16 30:1 31:
 4 36:9,14 37:2,14 38:21 39:8,

14,19,20 40:7,12,20
 refer [3] 13:10 92:15 97:1
 reference [1] 33:15
 referenced [3] 25:6 96:10 113:
 14
 referred [1] 23:7 26:19 30:2 35:
 7 59:20 95:19 96:13 98:4 102:
 20 103:13 104:21
 referring [5] 30:4 37:12 102:17
 110:8 111:5
 refers [1] 109:15
 reflect [1] 6:3
 reflecting [1] 110:20
 regard [2] 13:1,5 15:4 24:8 46:
 3 60:12 63:10,11 64:5 72:8,10,
 12 78:21 91:6 95:8 98:4 100:14
 104:20 107:21 111:13 113:14
 regarding [1] 32:10
 regards [2] 88:1 100:11
 regular [1] 117:8
 regulated [1] 22:1
 regulations [1] 4:6
 rehearing [24] 6:2 7:9,10,11,12,
 13,15,16,21 9:22 10:3,17 11:14
 12:9,10 13:11,20 14:1,3,4,7,15,
 16,16
 reiterate [1] 64:21
 relationship [1] 39:8
 relative [6] 42:14 45:1 86:7,9 93:
 2 100:21 115:7 116:12
 relevance [1] 28:14 78:20 82:
 19 83:8 84:5 86:5 87:21 98:13,
 14 105:7 107:14
 relevant [13] 9:6,10 12:6 28:15
 71:3,12 83:19,20,22 84:7 101:6
 104:9 105:8
 rely [1] 72:5
 remain [1] 6:5
 remediation [1] 15:5
 remembers [1] 46:6
 remind [1] 75:12
 removal [1] 64:5
 repairs [1] 91:6
 repeat [2] 29:15 67:8
 rephrase [1] 81:19
 replies [1] 11:19
 reply [1] 11:12
 reporter [1] 19:20
 reports [1] 89:10
 representative [1] 98:7
 representatives [1] 61:1
 representing [1] 5:7
 reproductive [1] 112:6
 request [7] 7:12,12,16,22 10:16
 11:14 12:9,10 116:3
 requests [2] 97:4 98:19
 require [1] 66:9
 required [3] 68:14 102:8 109:11
 requirements [3] 98:12 102:8
 104:5
 requires [1] 73:17
 rerouting [2] 57:10 80:19
 research [1] 51:16
 residences [1] 32:19
 residential [2] 21:9,10 35:2 61:
 20,22 62:13 63:6 97:18 111:9

residents [1] 57:11
 respect [2] 115:6,8
 respectfully [1] 116:3
 response [2] 9:19 117:2
 responsibilities [1] 17:12
 responsible [2] 17:7,13
 restate [1] 36:11
 restrict [1] 56:9
 restriction [1] 86:8
 retained [1] 84:21
 retains [1] 51:5
 retention [1] 73:20
 retired [2] 35:17 112:15
 review [14] 8:7,9 18:6,12,12 21:
 4 46:16 54:19 96:18 104:1,2,3
 116:4,10
 reviewed [6] 46:3,15 47:4 93:2
 103:22
 rezoning [6] 97:5 98:20 104:7,
 11,13,16
 rick [4] 3:4 8:19 12:15 75:3
 ridiculous [1] 112:21
 right-hand [5] 26:15 65:2 71:22
 72:14 87:7
 right-of-way [6] 6:11,12,14 11:
 4 15:11 95:15 96:1 100:12
 right-turn [2] 55:9,13
 rights [1] 72:12
 risk [1] 32:22
 road [260] 4:12 6:11,17 13:13 15:
 11 17:8,8 20:6,11,12,20,21,21,
 22 21:16,18,22 22:1,3,5,5,6,7,
 17,17,22 23:1,5,5,13,17,17 24:
 10,13,22 25:4,5,10,15 26:5,5,11,
 16,16,18,19,21 27:2,3,8,11,12
 28:9,12,17,22 29:17,22 30:1,22,
 22 31:4,11,14,16 32:3,7,10,13
 33:4,9,10 34:6,11,18,18 35:1,3
 36:7,7,8,9,13,13,14,15,16,17,21,
 22 37:2,2,6,8,11,14,20 38:4,13,
 21 39:1,2,3,7,8,14,14,19,20 40:
 2,5,7,10,12,14,15,15,20,21 41:3,
 7,8,9,13,18,18 42:15 47:2,2 48:
 12,22 49:7,16,17 50:4,5,11,12,
 18 51:4,6,15 52:3,4,6,21 53:7
 54:9,11,18 55:10,11,12,14,16,
 21 56:6,17 57:5,8 58:2,3,4,6,8,
 21 59:21 60:3,9,11,13,14 61:15,
 15 62:7,20 63:2,10,11 64:6,11
 65:1,1 67:17 70:4,6,14 71:7,8,
 10 72:1,1,15 76:13,13,16 77:1,4,
 6,7,9 78:17,18,22,22 79:3,4,9,
 10,13,19,20,21 80:4,8 82:21 83:
 18 84:21 85:4,5,6,16,17,18 86:8,
 10,14,15,20 87:6,12 88:16 95:1,
 20,20,22 96:6 100:19 101:13,13
 106:20,22 107:8,10,13,22 108:1,
 2,4,5,7 109:8,10,10,15,16,17
 111:22,22,22
 roads [6] 33:4 34:22 42:8 46:4
 55:18 98:16
 roadway [6] 31:9 36:16,20 37:
 16 39:6 41:4,5,6
 roadways [1] 40:20
 roosevelt [49] 20:6,20,21 23:5,
 13,17 25:5,15 26:11,16 28:17,

21 33:10 37:1 40:5,10,14,15 47:
 2 49:17,20 50:5,12 51:6 52:4
 54:9 55:21 56:17 58:6 60:14 61:
 15 62:20 63:11 65:1 70:4,14 71:
 7 72:1 77:7,9 78:18 79:19,20
 84:21 87:12 101:13 107:13 108:
 1,4
 ross [1] 2:22
 rounded [1] 70:11
 route [46] 23:5 28:13 29:18 30:1
 31:12,19 33:4 34:7,11 37:17 42:
 16 48:22 49:10,14 50:14 53:9,
 12,14 54:2,6,12,14,17 55:1,2,14
 56:4 57:8 58:8,22 59:7,9 64:15,
 17,20 69:20 72:15 77:9 87:6 88:
 21 97:14 107:1,5,16 109:3 113:
 15
 routes [1] 107:16
 routine [1] 63:7
 routing [5] 57:3,9 78:16,18 80:
 20
 rule [1] 73:7
 rules [5] 4:5 13:22 14:21 73:5,
 10
 ruling [3] 10:19 115:7,8
 rulings [1] 113:19
 runs [2] 41:5,6

S

s-h-u-m-a-t-e [1] 4:18
 safer [6] 53:14 64:15,17,20 65:
 16,17
 safest [1] 53:12
 safety [11] 32:22 63:20 64:3,6
 67:14,16,19 68:6,9 73:17 88:1
 same [3] 68:9 78:4 80:3
 saw [6] 40:19 42:13,21 46:6,11,
 19 57:22 62:15
 says [2] 74:1 110:21
 scale [1] 60:5
 scaled [1] 102:18
 scheduled [2] 102:4,5
 school [7] 111:1,7,11,13,15,17,
 18
 schools [1] 111:14
 scratch [1] 89:2
 section [6] 5:8 73:9,13,14,22 74:
 1
 sections [1] 73:12
 see [6] 21:13 22:11,21 24:11 45:
 22 95:19
 seek [1] 68:10
 seeking [2] 114:15,16
 seeks [1] 67:10
 seem [2] 92:19 112:7
 seen [3] 34:5,8 55:4 60:14,16,19,
 21 61:10 112:22
 sees [1] 20:2
 self-guided [1] 18:10
 separation [15] 18:4 20:12 22:
 18 24:14 53:7,11 55:12 56:7 64:
 18 65:14,16 67:1,12 79:9 88:10
 separations [3] 53:8 79:1 81:5
 sequence [3] 20:19 21:5 24:17
 serve [2] 35:1 40:3
 served [2] 73:18 87:16
 serves [1] 99:12

<p>set [3] 73:12 74:2 103:12 seven-tenths [3] 79:6,7 82:22 several [3] 19:9 32:1 99:3 shall [1] 73:11 sheets [2] 102:15 103:15 shifted [2] 63:13 106:22 shifting [2] 49:16 58:1 short [4] 9:19 95:17 116:13 117:3 shot [2] 22:8,15 show [17] 6:20 19:6,11,12 24:2 30:3,22 31:3 36:20 38:13 39:19 46:1 82:4 85:18 87:1 106:9 109:14 showed [2] 29:20 58:1 showing [2] 55:4 85:17 shown [6] 34:5 41:9 49:6 58:11 85:16 106:22 shows [2] 19:8 102:19 shumate [115] 1:18 4:17,17 5:20,22 8:13,14 10:5,17 11:12 14:7,10,15 15:1,7,15 16:7 19:5,17,22 22:13 23:3 25:22 26:2,3 28:15 29:4,13 34:2 35:19 43:7,8,12,16 44:2 45:5,9,11,18 46:10 48:17 58:10 59:16,19 65:5 71:20 72:4,7 74:20 75:2,3,11 76:3,7 81:8,11,19,21 82:3,9,14,20 83:6,14,20 84:1,7,10 86:6,16 87:4,22 88:3 89:12,21 90:2,5,6,11,17,21 91:2 93:5,16,20 94:7 98:14,22 99:1 101:8 104:10,17,18 105:8,15,20 106:9,15 107:19 108:8,11 109:14,18 113:3,4 114:2,7,10,16,20 116:16,17 117:11,19,22 side [14] 21:21 23:9 24:18 25:1 28:2 29:22 36:22 37:1 59:7,8 69:7,11 111:9,14 sign [2] 22:2 48:7 signal [12] 21:17 22:10 34:6,10 42:15 48:11 50:17 51:1,14 64:1 107:6,7 signalization [8] 48:11,21 50:13 51:6 65:22 92:6 107:2,21 signalized [2] 52:5 91:20 signalizing [1] 59:6 signals [2] 58:21 63:18 similar [1] 96:15 since [1] 11:8 sir [19] 17:20 31:2,5,15,17,21 32:11,15 35:4,12,15 46:16 59:13 61:17 62:1,14 64:7,16 101:19 sit [1] 50:1 site [11] 17:22 18:3,8 37:5 38:21 47:6,15 60:1 95:4 108:21 109:1 size [1] 27:21 slightly [1] 106:22 slows [1] 81:2 smoother [1] 55:13 snow [1] 29:7 solely [1] 7:17 sometime [2] 117:7,12 somewhat [2] 68:15,16 sorry [4] 23:15 25:19 55:11 74:12</p>	<p>sought [4] 7:13 14:3 29:4 92:6 sound [1] 25:18 sounds [1] 83:12 south [22] 6:17 20:4,5,11 21:1,6,19 37:1,16 41:10 44:7 56:3,6 57:8 61:21 62:6 63:2 64:14 70:5,15,16,18 southeast [3] 20:9 97:11,14 southward [1] 37:1 southwest [1] 97:10 spacial [1] 63:16 spacing [1] 63:18 speaking [3] 41:3,4 109:9 speaks [1] 89:1 specific [2] 51:3 69:14 specifically [3] 44:14,21 45:3 specificity [1] 14:2 speculation [1] 71:20 speculative [4] 61:13,14 80:13 113:18 speech [2] 19:15 74:8 speed [2] 69:1 80:22 spell [1] 94:11 spoke [1] 44:14 spoken [1] 61:1 spokesperson [1] 110:12 spring [1] 98:9 springfield [2] 5:6,10 square [3] 70:7,8 71:11 stack [2] 46:7,16 stadium [3] 22:11 24:20 25:3 2,6 101:14 103:22 104:1,2 stage [4] 58:19 80:11 81:7 86:11 stages [1] 59:2 stamped [2] 47:5,22 stand [2] 5:16 109:19 standing [3] 24:18,22 53:8 standpoint [1] 111:19 stands [2] 50:19 109:20 start [1] 83:10 started [3] 70:1,4 98:9 starting [1] 70:13 state [13] 4:8 7:14 14:2 16:8 23:7,11 44:21 45:3 59:9 67:22 78:17 81:16 94:8 stated [8] 7:11 11:20 14:7 21:11 48:10 52:11 statement [8] 4:21 5:21 7:5 8:14 33:20 52:14 93:3 112:21 states [3] 13:12,12 14:14 statuses [1] 39:11 stay [1] 112:22 still [5] 9:5 52:17 74:4 90:3 104:2 stop [1] 22:2 storage [1] 38:1 straight [1] 37:21 street [9] 21:3 22:16 23:8,11,19 31:8 44:7 57:1,4 streets [1] 57:5 strike [1] 12:11 students [1] 111:17 study [3] 55:4 66:13 101:21 sturm [2] 3:4 8:19 10:7,18 12:</p>	<p>15 75:3,12 81:12 82:10 83:15 84:11 87:5,14 90:7,12 91:8,13 92:22 93:18 113:14 116:9 sturmá [1] 75:5 subdivision [2] 1:10 4:14 subject [11] 6:10 9:6 17:8,22 48:8 94:22 95:9 97:8,9 105:4 110:18 submit [1] 20:2 submittal [1] 103:16 submitted [8] 12:2,17 45:20 96:15,18 99:2 106:2,3 successful [1] 92:10 suggesting [1] 89:21 suite [1] 4:20 summarize [1] 97:3 summarized [1] 13:15 summer [1] 98:9 supplement [4] 10:1 12:4,21 14:17 supplemented [2] 9:16 10:8 supplementing [1] 6:6 supply [10] 24:1,5,15 25:10,13 26:6,9 28:4 38:3 39:9 support [2] 14:12 32:13 supposed [1] 83:11 surrounding [2] 18:8 32:8 surveyed [1] 38:10 surveyor [1] 16:20 sustained [5] 8:10 34:1 87:3 105:19 108:10 swierczewski [4] 33:16 44:12,13 50:16 sworn [5] 5:12,17,19 16:3 75:7 94:3 system [1] 111:2</p>	<p>4,5 37:10 39:14 41:17 42:13 46:13,22 51:10 52:9,14 55:19 69:13 71:12 74:15 75:7,13 91:14 94:3 100:9 106:10 107:20 testify [3] 10:18 43:19 44:20 testifying [1] 72:11 testimony [30] 6:4,7 8:17,22 9:2 12:5,16 13:14 21:11 43:5 45:1 53:16,19 57:2 62:18 66:14 86:6,16,21 89:10 91:4 92:16,17 93:2 100:22 101:1 103:14 116:4,7,10 there's [10] 24:17 25:2 28:17 42:6 46:13 60:5 75:21 76:9 78:19 79:16,20 83:3,21 89:1,9 104:12 therefore [1] 104:7 they've [2] 103:18 104:11 thinking [3] 53:11 110:21 117:15 third [2] 78:9,11 thomas [2] 3:3 16:10 thorough [1] 18:5 though [1] 68:9 thousand [5] 76:15 77:5 107:8,9,10 three [4] 11:2 45:14 75:21 84:12 three-quarter [1] 27:20 tie [1] 88:1 tied [1] 76:22 timetable [2] 61:11 80:14 title [2] 17:1 30:15 today [20] 6:1,7 15:8 19:3 37:6 42:17 43:1 45:21 50:1 69:19 72:11,13 78:21 84:12 86:11,12,14 96:22 101:7 116:22 today's [5] 6:10 17:9,22 94:22 95:9 together [2] 64:2 108:3 tom [4] 5:13 10:11 15:15 33:15 ton [1] 27:20 took [2] 23:21 69:21 totality [1] 73:16 totally [1] 56:22 tour [2] 18:10,17 towers [2] 22:12 24:19 town [1] 105:9 township [13] 4:8,14 5:4 6:18 8:2 9:3 11:19 13:6 86:17 95:20,22 106:11 107:20 township's [4] 6:19,20 46:2 117:2 track [1] 20:13 tracks [18] 15:12 22:21 30:20 34:14 61:21 62:8 70:3,16,17 71:18 77:2,7 78:19 79:17,19,22 80:3 87:11 tract [1] 97:13 tractor-trailer [2] 28:7 62:15 tractor-trailers [1] 28:2 tracy [1] 2:22 traffic [37] 20:20 21:17 22:10 25:2 32:20 33:8 34:6,10 42:15 44:10,15 46:3 47:1 51:1,14 52:12 55:4 57:2 58:20 63:12,17,18 64:1 66:7,11,13 67:19 68:21 72:6 80:20,20 81:2 106:4,7,12 107:2</p>
--	---	--	---

T

108:2
trailer [1] 28:4
train [7] 66:4 67:18 68:22 69:1
 80:20,22 81:2
trains [1] 81:3
transcript [2] 117:7,8
transcripts [1] 53:18
transition [2] 55:14 56:3
transportation [9] 4:10 5:8 49:
 2 50:21 59:12 61:2 73:15 77:13
 101:16
travel [3] 56:3 69:10 73:7
traveled [1] 26:18
traveling [2] 21:19 72:13
traverse [1] 66:3
tried [1] 8:18
trip [1] 23:21
truck [2] 27:18,21
trucks [9] 25:14 62:15,19,20 63:
 6 64:8
true [3] 39:4 42:11 106:14
truly [1] 83:20
trustees [1] 99:18
try [2] 12:13 82:6
trying [4] 22:7 68:4 82:3 86:22
turn [12] 20:1 33:3 56:5,9,12,
 13 62:19 65:2 71:22 72:14 87:7
turning [1] 20:22
turns [1] 26:15
two [15] 10:10 13:7 18:6 25:6 44:
 16 57:18 64:2 70:3 79:1 80:11
 82:16 83:3 99:16 103:15 107:4
two-tenths [1] 21:20
type [3] 38:2 55:4 112:12

U

u-n-f-c-fi [1] 94:12
unable [1] 38:18
unaware [1] 15:9
uncertain [1] 108:17
under [8] 34:22 36:16 59:11 73:
 13 75:12 104:2,4,14
underneath [7] 24:14 26:5,6 27:
 11 79:17,21,22
underpass [8] 79:13,14,16,20
 88:8,11
underpasses [1] 83:7
understand [7] 36:9 54:7 66:10
 105:15 108:21 112:17 115:10
understanding [12] 11:22 26:
 13 27:1 48:19 51:4,9 59:2 69:5
 74:7 96:7 98:18 101:20
union [19] 4:7,18 16:12,13 17:4
 22:20 34:13,14,21 67:6,9 78:19
 79:22 82:6 83:4 87:16 88:18 92:
 6 95:14
unit [2] 97:6,7
unless [1] 84:8
unrealistic [1] 68:5
untch [12] 3:5 5:14 10:11 44:4,5,
 19,20 50:17 93:21 94:10,13
 110:8
untchá [1] 94:1
until [2] 105:13 118:7
up [25] 6:17 7:11 10:12 13:12 20:
 15 30:1 39:20 57:4 67:2,21 68:
 10,17 70:5,11 73:5 80:22 87:22

88:1 89:19 90:22 92:9 98:22
 100:1 103:15 108:8
up's [4] 10:16,21 68:6 115:4
uses [4] 34:16 63:17 97:17 105:
 4
using [3] 18:15 25:4 64:18
utilizes [1] 66:12

V

vacant [1] 111:21
vandalism [2] 89:19,21
variety [2] 16:19 59:6
various [6] 16:22 18:13 48:5,6
 83:16 105:3
vehicle [3] 65:1 67:18 69:2
vehicles [8] 27:22 64:9 66:3,15,
 17,18 87:10 88:22
vehicular [1] 68:20
verbal [1] 12:16
verification [2] 14:5,6
verify [1] 33:17
versus [1] 4:8
viable [1] 79:11
vicinity [2] 105:4 107:5
video [13] 18:19,21 19:1,6,15 25:
 6,9 26:4,18 28:3 29:4,7 61:19
videotape [2] 19:14 32:7 37:4
view [3] 38:20 58:12 66:4
viewed [1] 36:19
village [1] 96:2
vis-a-vis [1] 6:19
visibility [9] 66:2,6 91:22 92:3,5
visit [4] 17:21 18:7,19 95:3
visited [1] 18:2
visitor [1] 56:15
visitors [1] 57:11
visual [2] 37:5 38:20
voice [1] 20:1
volume [5] 66:8,11,17,19 69:2
votes [1] 99:3

W

wacker [1] 4:19
walked [2] 69:18 70:3
walking [1] 18:12
wanted [8] 24:2 25:8 56:16,20
 58:16,17 62:19 74:12
wants [7] 10:6 67:2 71:18 72:4
 86:9,13,14
way [5] 10:1 19:10,19 42:19 112:
 5
ways [2] 86:13 104:12
wednesday [1] 117:16
weeks [2] 18:6 29:20
weight [3] 7:20 8:6 13:17
welding [19] 24:1,5,11,15 25:7,
 7,10,13 26:6,9 28:4 37:9,15 38:
 3,22 39:9 58:2 62:16,19
west [26] 20:12 23:9 24:18 25:1,
 15 28:2,12 29:17,22 31:14,16
 56:20,21 57:7 59:7 70:6,20 71:
 5,18 76:15 77:5 95:17 108:2,4
 109:7,12
westbound [1] 23:12
westerly [1] 26:12
western [1] 36:22
whatever [3] 58:7 112:17 117:

20
wheaton [2] 1:22 5:2
wheel [1] 69:18
wheeled [2] 18:16 70:10
wheeling [1] 18:13
whereupon [5] 4:1 47:16 115:
 15,19 118:5
whether [19] 8:10 26:20 28:19
 50:8 54:21 55:6 57:4 82:18 83:
 21 86:7 93:3 98:14 104:8 105:
 10,12,16 108:9 116:7,11
whole [2] 99:20 112:2
whom [2] 16:11 94:13
will [23] 6:5 10:10 21:4 28:21 29:
 11 43:2,12 44:22 53:11 54:3 55:
 7,16,21 56:3 80:10 82:15 83:4
 99:3 101:3 104:17 110:22 112:
 4 113:13
wisest [1] 51:1
wish [1] 45:16
withdraw [1] 104:17
within [4] 10:16,22 29:6 96:2
without [3] 38:5 40:7 111:1
witness [34] 5:14 15:14 16:2 19:
 16 20:4 22:5 23:2 38:10 43:6,
 10,11,12,15,18 45:7,10,13 46:5,
 18 48:18 75:1,6 81:10 93:8,11,
 14,19 94:2 98:21 105:18 107:
 20 109:17 110:2,4
witnesses [8] 3:2 5:11,19 10:
 10,13,14,15 116:6
wonderful [1] 83:12
wondering [1] 110:19
woodfield [4] 36:21 37:11 39:7,
 21
work [3] 16:16 61:4 76:20
working [3] 59:3 80:17 85:1
works [6] 16:21 17:16,18 34:12
 50:16 80:19
writing [9] 9:3 12:3,18
written [2] 8:22 9:2

Y

year [1] 89:5
years [7] 11:2 13:7 16:19 19:9
 32:21 61:18 94:20
yesterday [9] 6:8,22 18:5 27:1
 40:19 46:11,19 47:4 116:20
young [2] 112:6,14
younger [1] 110:22

Z

zoning [6] 98:11 99:10,12 104:4,
 8,14

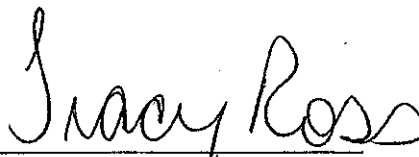
CERTIFICATE OF REPORTER

STATE OF ILLINOIS)
)
COUNTY OF COOK)
)
CASE NO. T01-0040)

TITLE: UNION PACIFIC RAILROAD COMPANY vs.
 THOMSHIP OF GENEVA, et al.

I, Tracy Ross do hereby certify that I am a
court reporter contracted by SULLIVAN REPORTING
COMPANY, of Chicago, Illinois; that I reported in
shorthand the evidence taken and the proceedings
had in the hearing on the above-entitled case on
the January 28 A.D. 2004; that the foregoing 112
pages are a true and correct transcript of my
shorthand notes so taken as aforesaid, and
contains all the proceedings directed by the
Commission or other person authorized by it to
conduct the said hearing to be stenographically
reported.

Dated at Chicago, Illinois, this day
February 10 A.D. 2004.



Tracy L. Ross

RECEIVED

MAR 25 2004

**LAW DEPARTMENT
UNION PACIFIC RR CO.**

March 22, 2004

Union Pacific Railroad Company, Petitioner,

Vs.

Township of Geneva, State of Illinois, and Illinois Department of
Transportation, Respondents,

T01-0040

Petition for an order of the Illinois Commerce Commission for the
closure of Old Kirk Road, public grade crossing DOT #174 986H
at Milepost 33.75 on the Geneva Subdivision, City of Geneva,
Geneva Township, Kane County, Illinois.

STAFF BRIEF ON REHEARING

Staff, after review of the evidence presented on rehearing, remains of the opinion that the Old Kirk Road at-grade crossing with the tracks of the Union Pacific Railroad Company ("UP") near Geneva be closed, abolished and barricade to vehicular traffic. The Old Kirk Road at-grade crossing should be provided with barricades conforming to the requirements of 92 Ill. Adm. Code 1535.701 and the pertinent provisions of the Manual on Uniform Traffic Control Devices. The UP should remove the crossing surface and the crossbuck signs at the crossing, and re-establish any ditch line if necessary. The Township should remove the advance warning signs and post "road closed signs".

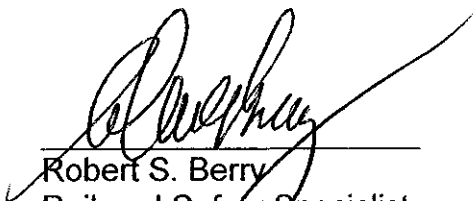
Staff maintains that the safety of the motoring public and train crews is best served by the closure of the Old Kirk Road at-grade crossing, especially considering the location of the Kirk Road highway overpass structure immediately to the west of the Old Kirk Road at-grade crossing. The Old Kirk Road at-grade crossing is one of the busiest crossings not only the Chicago area, but in the State of Illinois. The UP operates 60 passenger trains and 70 plus freight trains over the crossing, some at a very high rate of speed. The average daily vehicular traffic over the crossing varies from day to day depending on whether any events are being held at the Kane County Events Center. It is still staff's opinion that Old Kirk Road is used primarily for a short cut around the traffic signals at the Kirk Road/Roosevelt Road intersection during events at the Kane County Events Center. For visitors leaving the Kane County Events Center, the safest route to take for northbound traffic is new Kirk Road that crosses over the UP track by means of a highway overpass structure, not crossing Kirk Road onto Old Kirk Road to travel northerly or the same direction as a motorist would using the Kirk Road overpass structure.



Testimony shows that local residents and businesses use Old Kirk Road for ingress/egress to their property, with the businesses located primarily north of the UP's tracks. There are right and left turns allowed at the Old Kirk Road/Roosevelt Road (Ill. Rte. 38) intersection and there is no need for heavy truck traffic to process south over the Old Kirk Road/UP crossing through a residential area to Kirk Road. The only reason truck traffic travels south to Kirk Road is that it is easier than turning across Ill. Rte. 38. It is important to reiterate that there are currently both right and left hand turns allowed at the Old Kirk Road/Roosevelt Road intersection.

Once again, the Federal Railroad Administration, the DuPage Railroad Safety Council, the Chicago Commuter Grade Crossing Steering Committee, the Union Pacific Railroad Company, the staff of the Rail Safety Section of the Commission, as well as several residents that live on Old Kirk Road, support the closure of the Old Kirk Road at-grade crossing and that the rerouting of vehicular traffic over the Kirk Road highway overpass structure or onto Ill. Rte. 38 is in the safety interest to vehicular traffic.

The Old Kirk Road at-grade crossing is not needed for the transportation network in the area, but is a hazard to vehicular traffic, especially when there is a highway overpass structure on Kirk Road located immediately to the west of the existing at-grade crossing and that Kirk Road extends in the same direction as Old Kirk Road. The closure of the Old Kirk Road at-grade crossing would be a benefit to the area and not cause great harm to the quality of life in northern Illinois. This is a minor crossing on a minor roadway and there is a safer, alternate route that can be utilized by vehicular traffic, the highway overpass structure on Kirk Road.



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